Supreme Court, U.S.
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No. 97–

IN THE

Supreme Court

OF THE

United States

OCTOBER TERM, 1997

DEBRA C. VINGI
Petitioner,

VS.

STATE OF RHODE ISLAND, *et al.*
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Court of Appeals correctly accepted the trial court's granting of Respondents' motion for summary judgment with regard to Count II of Petitioner's complaint, on the ground that Petitioner failed to exhaust administrative remedies with regard to her allegation that the Respondents' failure to use objective, ascertainable standards in the background investigations had a negative, disparate impact on women, including Petitioner.

Whether the Court of Appeals correctly accepted the trial court's granting of Respondents' motion for summary judgment with regard to Count IV of Petitioner's complaint, on the ground that Petitioner had failed to present a genuine issue for trial that the decision to not recommend her as a candidate for the 1994 Rhode Island State Police Academy was in retaliation for her previously having filed a complaint of discrimination with the Rhode Island Commission for Human Rights and with the EEOC.

PARTIES TO THE PROCEEDING

Debra C. Vingi
Petitioner

State of Rhode Island
Respondent

Lincoln Almond
Respondent

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1) The Court of Appeals erred when it affirmed the trial court's granting of Respondents' motion for summary judgment with regard to Count II of Petitioner's complaint, on the ground that Petitioner failed to exhaust administrative remedies with regard to her allegations that Respondents' failure to use objective, ascertainable standards in the background investigations had a disparate, negative impact on women, including Petitioner.

2) The Court of Appeals erred when it accepted the trial court's granting of Respondents' motion for summary judgment with regard to Count IV of Petitioner's complaint, on the ground that Petitioner had failed to present a genuine issue for trial that the decision to not recommend her as a candidate for the 1994 Rhode Island State Police Academy was in retaliation for her previously having filed a complaint of discrimination with the Rhode Island Commission for Human Rights and with the EEOC.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Debra C. Vingi respectfully prays that a Writ of Certiorari issue to review the judgment entered by the United States Court of Appeals for the First Circuit on December 29, 1997.

OPINIONS BELOW

Petitioner seeks review of the Judgment and Opinion of the United States of Appeals, First Circuit, in the case of *Debra C. Vingi v. State of Rhode Island, et al.* No. 97-1705 (December 29, 1997), (unpublished), 132 F.3d 31, (attached hereto as Appendix A). That Opinion accepted the Order of the United States District Court for the District of Rhode Island in Civil Action No. 94-466B (1997 WL 816864 (D.R.I.)) (May 21, 1997) (attached hereto as Appendix B) The Order adopted the Report and Recommendation of the Magistrate Judge. (May 24, 1996) (attached hereto as Appendix C).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals, First Circuit, was entered on December 29, 1997.

The jurisdiction of this court is invoked under 28 U.S.C. sec. 1254(1).

APPLICABLE STATUTORY PROVISIONS AND RULES OF PROCEDURES

This case involves the following statutory provisions:

42 U.S.C. Sec. 1983

42 U.S.C. Sec. 2000e(2)

Rule 56(c), Federal Rules of Civil Procedure (Appendix D)

STATEMENT OF THE CASE

The District Court had jurisdiction over Plaintiff-Petitioner's (hereinafter "Petitioner" or "Vingi") claims under 42 U.S.C. Sec. 1983 (civil rights) and 42 U.S.C. Sec. 2000e(2) (Title VII). Petitioner alleged that:

1. The State of Rhode Island and the individual Respondent, Lincoln Almond had violated Title VII of the Civil Rights Act of 1964, as amended, by engaging in sex discrimination where Respondents or their agents took adverse employment actions or made employment decisions against Petitioner in retaliation for or as a result of her complaints of discrimination to the Rhode Island Commission for Human Rights and the EEOC.
2. The individual Respondent, acting under color of state law and pursuant to practices attributable to the State, had intentionally deprived Petitioner of rights guaranteed by the Constitution and laws of the United States in violation of 42 U.S.C. Sec. 1983.

On May 21, 1997, the District Court granted Respondents' Motion for Summary Judgment. Petitioner timely filed an appeal on May 28, 1997. On December 29, 1997, the First Circuit Court of Appeals affirmed the lower court's decision.

PROCEDURAL HISTORY

On September 5, 1994, Petitioner commenced this employment discrimination action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sec. 1983, and state law, including the Fair Employment Practices Act, R.I.G.L. Sec. 28-5-1, *et. seq.* F.E.P.A.), and the Rhode Island Civil Rights Act of 1990, R.I.G.L. Sec. 42-112-1, *et. seq.*

Petitioner asserts that the District Court erred when it adopted the Magistrate Judge's Report and Recommendation which erroneously held that Respondents' decision to not select Petitioner as a candidate for the 1994 Rhode Island State Police Training Academy was not discriminatory or retaliatory. Originally, Petitioner claimed that: (1) matters she alleged in her Title VII civil suit were reasonably related to her administrative charge of discrimination; (2) Respondents' use of the Law Enforcement Candidate Record Examination had a disparate, negative impact on her and other women; (3) Respondents intentionally discriminated in the conduct of the background investigations in 1986 and 1994 and that the method of such investigations as a selection device had a disparate, negative impact; (4) Respondents retaliated against Petitioner for opposing sex discrimination and filing a Title VII administrative charge; and, (5) Petitioner stated a cause of action under the Rhode Island Fair Employment Practices Act of the Rhode Island Civil Rights Act of 1990.

Beginning in 1983, Vingi applied to the Rhode Island State Police. The State Police, however, held no academy. In 1985, Vingi reapplied, passing the agility test but failing the eye examination. Vingi reapplied in January 1986. She passed the agility test, the physical examination (which included the eye examination) and the psychiatric examination, but did not pass the final interview board. In 1989, Vingi submitted her next application for admission into the 1990 State Police Training Academy. Vingi successfully completed the written examination and the following stages in the selection process but did not pass the final interview board.

In 1991, Vingi applied for the 1992 Academy. Unlike the application process in 1990, Respondents administered the written examination first. In October 1991, Respondents notified Vingi that she received a grade of 90, and that Respondents would only process those applicants who scored 93 and above.

In October 1992, Vingi filed a charge of discrimination with the Rhode Island Commission for Human Rights (RICHR). Vingi alleged the following in her charge:

"1. I have been discriminated against in my attempts to secure employment with the Rhode Island State Police and Colonel Edmund S. Culhane, Jr.

2. On October 8, 1991 I learned that I had not successfully completed the written test for entrance to the Training Academy. I received a score of 90. The lowest possible score to pass was 93. This cutoff score has an adverse impact on women and other minorities. The arbitrary score of 93 was imposed by the colonel of the state police and not by the developer of the test [and] the "Law Enforcement Candidate Record" examination.

3. I believe I have been discriminated against because of my sex in that:

   a. I am female;

   b. I am qualified for the position of trooper;

   c. The arbitrary cutoff score of 93 on the written exam has an adverse impact on women and minorities;

   d. The cutoff score was imposed by the colonel of the state police and not the developer of the test;

   e. The discriminatory action is in direct violation of state and federal applicable law and has caused me to suffer a loss of monies and work related benefits."

In an attached statement of her charge, Vingi related the facts and circumstances surrounding her numerous applications to the State Police. In reference to her 1986 application, Vingi stated that it was her "understanding that a background investigation was conducted by members of the Department which may have contained inaccurate information about me and which omitted positive information". Furthermore, Vingi's attached statement alleged that she "did not know whether a new background investigation was conducted or whether an updated investigation was made" at the time of the 1990 Training Academy class.

In March 1993, Vingi submitted an application for admission into the Training Academy that the Respondents were scheduled to com-

mence in 1994. Unlike the application process in 1991, Respondents had allowed those who failed to score 93 or above and/or not selected for the 1992 Training Academy to reapply. Vingi successfully completed the agility test and oral interview.

In January 1994, the RICHR determined that there was no probable cause to Vingi's charge. Vingi requested the EEOC to review the RICHR's findings.

In March 1994, State Police investigators directed Vingi to meet with them. At that interview, State Police Detective Michael Iarossi questioned Vingi about her working relationships with former colleagues whom the State Police had interviewed in connection with the background investigation conducted by the State Police in 1986. Iarossi questioned Vingi about colleagues with whom she had had little or no contact during the previous five to eight years.

During the March 1994 interview, Iarossi asked Vingi whether it was an oversight on her behalf that she had failed to disclose her "civil lawsuit against the State Police" on her 1993 application. Vingi stated that she had no intention of misleading anyone; that she understood the question to require disclosure only of actual litigation; and, that she had not filed a lawsuit but merely a charge with an administrative agency, the RICHR. Iarossi demanded details concerning Vingi's charge of discrimination and about the nature of her relationship with her legal counsel, including counsel's name; when she had retained legal counsel; whether she had given any depositions in the "lawsuit," whether Vingi was paying her attorney; whether counsel was charging her for counsel's services; and when Vingi had last spoken with counsel concerning her "lawsuit".

The State Police did not select Vingi for the recruit training class that began in June 1994. On September 5, 1994, Vingi commenced her employment discrimination action. On October 30, 1995, Respondents filed a Motion for Summary Judgment to which Petitioner objected. The motion was referred to a Magistrate Judge for consideration. On May 24, 1996 the Magistrate issued his Report and Recommendation. Petitioner filed her objections thereto. Thereafter, on April 14, 1997, the Court held a hearing on Petitioner's objection and on May 21, 1997 the Court (BOYLE, C.J. (ret.)) rendered its opinion and Order adopting the Magistrate

Judge's Report and Recommendation. Petitioner timely filed a Notice of Appeal to the Court of Appeals. On December 29, 1997 the First Circuit affirmed the district court's decision to adopt the Magistrate's Report and Recommendation.

REASONS FOR GRANTING THE WRIT

A district court may grant a [defense] motion for summary judgment only, if, drawing all inferences against the movant, and after considering whether the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," [the court concludes that] there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 575, 585-86 (1996); *Amsden v. Moran*, 904 F.2d 748 (1st Cir. 1990), *cert. denied*, 49 U.S. 1041 (1991), citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 106 U.S. Ct. 2505 (1986). The court must view the material presented in the light most favorable to the party opposing summary judgment. *Kauffman v. Puerto Rico Telephone Co.*, 841 F. 2d 1168, 1171 (1st Cir. 1988). All inferences must be drawn against the movant and in favor of the non-movant, *Poller v. Columbia Broadcasting System*, 368 U.S. 464, 473 (1962), and the relevant law must lead to a conclusion in favor of the movant. *Anderson, supra*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511. While summary judgment is not precluded *per se* in cases where motive and intent are at issue, *Goldman v. First Nat'l Bank of Boston*, 985 F.2d 1113 (1st Cir. 1993), it should be used sparingly. *Lipsett v. University of Puerto Rico*, 864 F.2d 881, 883 (1st Cir. 1988).

The Court of Appeals erred when it affirmed the District Court's adoption of the Magistrate Judge's Report and Recommendation which held that the Respondents' decision to not select Petitioner as a candidate was not discriminatory or retaliatory. Where Petitioner presented clear and convincing evidence of Respondents' discriminatory practices and intent over an extended period (including the period during which Petitioner applied for admission to various Rhode Island State Police Training Academies), evidence from which discriminatory intent and lack of legitimate purpose could be inferred (including the affidavit of Norman Bedard), and where prior judicial findings of discrimination existed, *see U.S. v. State of Rhode Island*, Docket No. 81-0183-S (D.R.I. 1981) and *Pontarelli*

v. Stone, 713 F.Supp. 525, (D.R.I. 1989), a reasonable trier of fact could have concluded that Petitioner was the victim of unlawful discrimination.

1. THE CIRCUIT COURT ERRONEOUSLY ACCEPTED THE TRIAL COURT'S CONCLUSION THAT CERTAIN MATTERS THAT PETITIONER ALLEGED IN HER TITLE VII CIVIL SUIT WERE NOT REASONABLY RELATED TO MATTERS SHE ALLEGED IN HER ADMINISTRATIVE CHARGE.

The Court incorrectly determined that certain matters Petitioner alleged in her complaint were not reasonably related to matters she had alleged in her administrative charge. The Court determined that Petitioner had failed to exhaust administrative remedies with regard to the claims as to the adverse impact of and the discriminatory manner in which the background investigations were conducted, and therefore, she was precluded from complaining about the same. The Court erroneously held that these claims were not "reasonably related" to the claim that Petitioner had been discriminated against as the result of the administration of the Law Enforcement Candidate Record Exam.

A court may not entertain a claim not previously presented to the administrative agency if it is not "reasonably related" to the underlying claim of discrimination. A claim not requiring exhaustion may be reasonably related in one of three ways. *Butts v. City of New York Dept. of Housing Preservation and Development,* 990 F.2d 1397 (2nd Cir. 1993). The first type of reasonably related claim is one which could reasonably have been expected to grow out of the investigation of the original charge of discrimination. (*Id.* at 1402-03). The second type of reasonably related claim is one where [a] further discriminatory act[s] occur after the EEOC investigation was completed. (*Id.*) The third claim that may be heard occurs where a complainant posits that the additional acts of discrimination are carried out in the same manner as those acts alleged in the administrative charge. (*Id.*) Petitioner's complaint about the background investigations of 1986 and 1994 satisfies these criteria.

When Petitioner filed her administrative complaint, she complained that Respondents discriminated against her on the basis of sex in its decision to not admit Petitioner to the 1992 Rhode Island State Police Training Academy. Petitioner's EEOC charge alleged that

the "Law Enforcement Candidate Record" examination (LECR) had an adverse impact upon women and minorities. However, Petitioner's attached Statement in Support of her Charge of Discrimination on the Basis of Sex against the Rhode Island State Police included the following:[1]

(In reference to her 1986 application to the State Police):

> "At that time, I passed the agility test, the physical examination, the initial psychiatric examination and the first interview, but was disqualified as a result of the final interview. Although there were female members of the panel which conducted the initial interview, there were no female members of the final board which interviewed me. It is my understanding that a background investigation was conducted by members of the Department which may have contained inaccurate information about me and which omitted positive information."

(In reference to her 1990 application):

> "I reapplied for the 1990 Training Academy class. Again, I successfully completed portions of the application process (which included, for the first time, a written examination), but was disqualified as a result of the final interview. I do not know whether a new background investigation was conducted or whether an updated investigation was made at that time." [2]

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[1] While the conduct of the original background investigation in 1986 is not actionable, in and of itself, as it was beyond any applicable limitations period, Respondents' incorporation and use of same in 1994 demonstrates its viability as a discrete act of discrimination. *Nealon v. Stone*, 958 F.2d 584 (4th Cir. 1992).

[2] As the result of a consent decree entered into between Respondents and the federal government in *U.S. v. State of Rhode Island, supra*, and complaints made by the Pontarelli plaintiffs, the Department of Justice was monitoring parts of the 1986 selection process. Petitioner's position that she was the victim of unlawful discrimination in 1986 is supported by her deposition testimony that she had been informed by Assistant U.S. Attorney General Katherine Baldwin, Civil Rights Division of the U.S. Department of Justice, that there were discrepancies in the manner in which her background investigation had been conducted and that while she wanted to be afforded an equal opportunity to be selected, she did not want the Department of Justice to intervene on her behalf at that time, as she believed that such action would only antagonize the Respondents who would retaliate against her and which would further diminish her chances of being selected.

(Regarding the State Police's selection of women and other minorities):

> "The history of the Rhode Island State Police *vis a vis* the selection of women and minorities has been far from exemplary. Political affiliation, familial relationships and personal bias have played extensively in the selection and disqualification process. Contrary to the practices endorsed by the Commission of Accreditation for Law Enforcement Agencies, the recruitment, selection and training practices of the Rhode Island State Police have had as their goal the disqualification and elimination of candidates as opposed to the identification and employment of the best candidates available." [3]

While it is difficult to speculate what the investigatory agency "might or might not [have] discover[ed] in the course of an investigation," *Cheek v. Western and Southern Life Insurance Co.*, 31 F.3d 497 at 500 (7th Cir. 1994), it is reasonable to assume that the conduct of the background investigation could have been reviewed (and should have been reviewed) particularly in light of previous allegations of sexual discrimination and harassment in selection and training. Moreover, where the State Police offered the defense that the "bottom line" percentages of male and female candidates

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[3] While not a model of clarity, Petitioner's statement put both the agency and the Rhode Island State Police on notice that there were procedural deficiencies in the entire selection process, a fact with which both the investigatory agency and the State Police were well aware. *Yamaguchi v. U.S. Dept. of the Air Force*, 109 F.3d 1475, 1480 (9th Cir. 1997)("An investigation of Yamaguchi's sex discrimination charge would 'reasonably [have been] expected to grow out of her EEOC charge. The fact that no such investigation took place does not preclude federal court jurisdiction over this claim.") *Murray v. Bd. of Education of the City of New York*, 984 F.Supp. 169, 177 (S.D. N.Y. 1997); *Miller v. Vesta, Inc.*, 946 F.Supp. 697 (E.D. Wis. 1996). In *Miller*, the defendant employer claimed the plaintiff's EEOC charge contained sexual harassment and retaliatory discharge claims and dismissal for excessive absenteeism, but contained no hint of disparate treatment. The court, however, found the plaintiff's allegations in her supporting affidavit that she believed the defendants had treated her differently from males (who were excessively absent) could reasonably be expected to include a disparate treatment claim. *Id.* The court concluded that Miller had implicated the same individuals and the same conduct. *Id.* Here, Petitioner alleged that other selection devices were improper as used, or, if properly used, had an improper impact.

accepted were equivalent, the agency should have examined the effect of the other selection criteria. That an agency investigation into Respondents' use of a written examination should have been expanded to encompass the entire selection process, is further supported by the fact that the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607 (1984), are applicable to any selection procedures "used as a basis for making employment decisions." Furthermore, The Uniform Guidelines apply to:

> "traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored applications."
> 29 C.F.R. 1607.16(Q).

The Court overlooked the nexus between the LECR examination and the background investigations where Respondents utilized both as a basis for making an employment decision. The necessity of utilizing objective ascertainable standards with regard to each selection device in the hiring process is emphasized in 1994, where the troopers who conducted the background investigations and interviewed the applicants determined whether an applicant continued as a viable candidate. (Bedard Aff., par. 10) (App. E) Recommendations were therefore dependent upon the discretion of the interviewer. The decision to not recommend an applicant by the interviewer/investigator was a discrete pass-fail mechanism. Thus, Petitioner asserts that an unvalidated selection device, *i.e.*, the background investigation, was discriminatory in its execution and as applied.

Sufficient evidence exists from which a jury could conclude that Petitioner was the victim of intentional discrimination based upon her gender and as the result of the manner in which the background investigations were conducted (in both 1986 and 1994). A reasonable trier of fact could determine that Detective Iarossi treated Petitioner more harshly than male candidates and subjected her to particularized scrutiny because of her opposition to sex discrimination. Respondents' hasty and punitive responses toward Petitioner provide an ample basis to support the inference that they harbored illegal motives. *Stepanischen v. Merchants Despatch Transportation Corp.*, 722 F.2d 922, 928 (1st Cir. 1983).

First, Respondents failed to produce any objective criteria or guidelines for the collection, assessment (including both general relevance and relative importance) or utilization of information obtained during an investigation. As Petitioner's personnel expert stated in his affidavit "such subjective standardless decisionmaking almost inevitably results in discrimination against women and minorities." (Bedard Aff., par. 11)(App. E). More importantly, the practice substitutes the untutored opinion of the investigator for the psychological examination and review required by state law. *(Id.)*

"In the absence of objective guidelines, individual caprice, whim and bias often become the cornerstones of decision-making." (*Id.*, par. 12) (App E). Indeed, as Iarossi testified at deposition, the only criteria which existed in 1994 "consisted of an instruction sheet setting forth the format for the written report used to summarize the information obtained." *(Id.)*

> "It basically lays out how they would like your final detective activity report to look like. It doesn't--it doesn't tell you what to put in your report, however, it describes what portion of the report should go first, what should go second and so on leading up to the conclusion of the report." (Bedard Aff., par. 12 quoting Iarossi Dep., App. F, p. 37a).

These standards and instructions are "inadequate, will inevitably result in discriminatory effect, and alternative, less discriminatory practices have been available and in common use for many years." (Bedard Aff., par. 12)(App. E). The lack of standards for evaluating the information obtained becomes critical where Iarossi not only concluded that Petitioner deliberately intended to mislead the Department with one answer on the application, but that she was guilty of a pattern of deception.

Iarossi's testimony regarding Respondent's lack of substantive guidelines for background investigations was confirmed by Sergeant Messier (Messier Dep.)(App. H, p. 63a) who stated that the 1994 background investigation was essentially a "pass-fail" mechanism and that the detectives conducting the investigation had no formal training. As Iarossi admitted, such training consisted of "being shown a background investigation activity report and having it explained to me how a report should read and what categories to list on the report and what persons should be interviewed." (Bedard Aff., par. 13, App. E quoting Iarossi Dep., App. F, p. 36a & Messier

Dep., App. H). Iarossi further testified that in 1994, troopers conducting background investigations "were instructed to include their recommendations 'on any background investigations conducted by members of the detective division'," (Bedard Aff., par. 14, App. E quoting Iarossi Dep., App. F, p. 38a), and that applicants who were not recommended by background investigators "were not processed further in the selection process." (Bedard Aff., par. 14, App. E). Moreover, the decision whether to recommend an applicant was left to the sole discretion of the background investigator. *(Id.)*

> "The process described by Iarossi and Messier is wholly inadequate and will result in discrimination. The sole legitimate purpose of the background investigation is to gather facts concerning the applicant and to verify representations made by the applicant in written applications or otherwise. The process as described allows individuals to veto candidates without the application of any validated, objective, or ascertainable standards."
> (Bedard Aff., par. 14)(App. E)

The absence of objective standards for recommending candidates coupled with the investigators' lack of specific training in background investigations "is further compounded by the investigators' failure to identify any bias or prejudice on the part of the persons contacted or interviewed during a background investigation." (Bedard Aff., par. 15, App. E) While some investigators might ferret out such information, Iarossi, who conducted the background investigation of Petitioner in 1994 indicated that with regard to the persons interviewed, "Who they are, whether they are biased or prejudiced witnesses, I have no idea." (Iarossi Dep.)(App. F, p. 35a). This failure becomes particularly significant, where Petitioner worked in a predominantly male work environment and Petitioner's co-workers may have had a bias against females working in or who wanted to work in traditional male occupations and where the investigator himself worked in a predominantly male environment and may have had a similar prejudice.

The failure to establish guidelines for the conduct of the background investigation had a disparate, negative impact on Petitioner,

> " as opposed to the males whose background investigations were conducted by Iarossi. Iarossi testified that he con-

> ducted the investigations of John Charbonneau, Timothy Sanzi (who had been identified by Vingi as having been graduated from the 1994 Training Academy class) and another unidentified individual, as well as Vingi. While Iarossi refused to identify the fourth individual either by name or by gender, he later admitted that he did not conduct a personal interview with this candidate because the candidate had withdrawn his name from consideration." (Bedard Aff., par. 16)(App E)

Respondents refused to identify any persons interviewed or information obtained with regard to any of the candidates interviewed by Iarossi (including information about Petitioner) in 1994 (or by Detective Mattos in 1986), (Iarossi Investigative Report, App. G), and made the bald assertion that each investigation was conducted in an identical fashion. However, Iarossi later contradicted this assertion when he admitted that he did not ask all the candidates about certain financial matters. (Iarossi Dep.)(App. F, p. 43a-44a, 50a) Nor is there any indication that Detective Iarossi re-interviewed the same individuals in 1994 as had been questioned in 1986 to determine whether they had any continuing contact with Petitioner, and if so, whether their opinion of Petitioner had improved during the interval. Where personal growth, development or improvement may be a desired characteristic in a police officer, the failure to determine Petitioner's capability for same might be fatal. Moreover, a reasonable trier of fact could conclude that Respondents' "refusal" to disclose such information about Petitioner and the other candidates implicated more than "concern for the interviewees' privacy." Where some of the opinions were more than 8 years old, and the investigatory process was riddled with other deficiencies, as identified by Petitioner's expert, a reasonable trier of fact could conclude Respondents had something to hide.

Respondents' lack of objective criteria becomes even more egregious when viewed in light of the ostensible reasons for Iarossi's decision to not recommend Petitioner for further processing. Iarossi determined that Petitioner had deliberately lied on her 1993 State Police application and that he "did not find her suitable to join the ranks of the Department." (Bedard Aff., par. 17, App. E, quoting Iarossi Dep., App. F, p. 45a) Iarossi based this conclusion on his belief that Petitioner "had problems with co-workers, supervisors

and members of the public." (*Id.*). However, when Iarossi reviewed Petitioner's personnel file, he found no complaints from members of the public, her supervisors or co-workers. (*Id.*, p. 46a). Furthermore, while Iarossi accepted at face value, unnamed male sources' criticisms of Petitioner's social skills, he refused to believe Petitioner's statements that she did not have problems dealing with her co-workers, supervisors or members of the general public. (*Id.*, p. 47a). Additionally, despite the non-existence of any documentation concerning complaints against Petitioner in her personnel folder, Iarossi accepted the negative comments of an anonymous caller. (Iarossi Investigative Report)(App. G, p. 55a).

2. THE CIRCUIT COURT ERRONEOUSLY ACCEPTED THE CONCLUSION THAT RESPONDENTS DID NOT RETALIATE AGAINST PETITIONER AS THE RESULT OF HER OPPOSITION TO SEX DISCRIMINATION AND OF HER FILING A TITLE VII ADMINISTRATIVE COMPLAINT.

Petitioner presented sufficient probative evidence to withstand Respondents' motion for summary judgment that Respondents had retaliated against her in 1994 for engaging in a protected activity (*i.e.*, filing an administrative charge), and that there was a connection between the adverse action and the protected activity. *See, Robinson v. Shell,* 117 S.Ct. 843 (1997) (anti-retaliation provision of s. 704 applied to former employees); *Edwards v. Nederland Independent School District,* 930 F.Supp. 272, 275 (E.D.Tex. 1996).

Petitioner submitted sufficient probative evidence from which a jury could infer that Petitioner was the victim of intentional discrimination based upon her gender and as a result of the manner in which the background investigations were conducted and that consequently, "a rational trier of fact [could] find for [her]." *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 578 106 S.Ct. 1348, 1356, 89 L.Ed. 2d 538 (1986). As discussed, *supra* at p. 6, the trier of fact could reasonably conclude that Iarossi treated Petitioner selectively and more harshly than male candidates and subjected her to particularized scrutiny because of her opposition to sex discrimination. Respondents' hasty, harsh, and punitive responses where Petitioner is concerned provide an ample basis to support the inference that they harbored illegal motives.

The appellate court accepted, without explanation, the District Court's determination that Petitioner had failed to demonstrate she had been retaliated against, accepting the Respondents' assertion that the decision to not recommend Petitioner's candidacy was premised on the conclusion that Petitioner was abrasive and could not get along with co-workers and that she had engaged in a pattern of deliberate deception. (Iarossi Investigation Report) (App. G, p. 61a). This determination ignored both the deficiencies in the content of the conclusion (*i.e.*, the Petitioner's abrasiveness, etc., and a pattern of deception) and in the methodology by which the conclusion was reached (*i.e.*, the background investigation). Moreover, the court's determination overlooked the evidence that the conclusion was pretextual.

Petitioner presented evidence that her non-selection as a candidate for the 1994 Training Academy class was due to Detective Iarossi's negative assessment regarding her ability to become a trooper. This conclusion was premised on Iarossi's belief that Petitioner had lied on the March 1993 application in that she failed to disclose the existence of her complaint to the Rhode Island Commission for Human Rights. (Iarossi Dep.)(App. F, p. 39a-42a) Specifically, Iarossi believed that Petitioner lied on that portion of the March 1993 State Police application entitled "COURT RECORD". The specific question asked, "Have you ever been Plaintiff or Defendant in civil court action?" Petitioner accurately responded, "No". The lower court apparently accepted, without question, Iarossi's belief that Petitioner, a civilian dispatcher in the enforcement division of a regulatory agency should be held to a higher standard of knowledge as to the technical distinctions between the judicial and administrative systems than a state police detective who was part of the judicial system and who, himself knew that the Commission for Human Rights was not a court. Moreover, the court accepted Iarossi's unsupported conclusion that Petitioner had participated in a pattern of deception. A reasonable trier of fact could conclude that Iarossi could not reasonably have concluded that Petitioner had intentionally lied based upon her response to this question. A trier of fact could also reasonably conclude that where all the particulars of the administrative charge were known to the State Police, (Iarossi Investigative Report) (App. G, p. 56a-61a), an applicant with a modicum of intelligence who was going to include false or inaccurate

information in an application, would choose a matter that was not as easily verifiable, or about which the State Police had no knowledge. Moreover, a reasonable trier of fact could believe that Iarossi's conclusion that anyone who hires and pays an attorney to press a claim before an administrative agency is a Plaintiff in a court action, is not worthy of any credibility. Thus, the lower court should not have accepted Respondents' conclusion that Petitioner's application answer was deliberately misleading, and as such, was a rational, non-discriminatory reason for Respondents' decision to exclude Petitioner from further consideration. In light of the above, the lower court's failure to address Petitioners' contention that Respondents' justifications were merely pretextual was clearly erroneous. Moreover, the court ignored Petitioner's support of her claim of pretext in that Iarossi was not satisfied merely with confirming during the interview that Petitioner had filed a charge of discrimination with the RICHR, etc., but that he sought specific information concerning the nature of the charge, and information protected by the attorney-client privilege, including the identity of Petitioner's counsel, how Petitioner was paying for the services to her attorney and the date upon which she had last conferred with counsel. Such questions exceed the bounds necessary to show, as Iarossi concluded, that anyone who hires and pays for the services of an attorney to press an administrative claim, is a Plaintiff. (Iarossi Dep.)(App. F, p. 39a-45a), (Iarossi Investigative Report, App. G, p. 61a)

Moreover, a reasonable trier of fact could conclude that while inquiries about financial information, including information about an applicant's debts or monetary obligations, was relevent to an applicant's future susceptibility to "enticements" or improper gratuities, the failure to question Petitioner about her ability to pay other obligations, such as a mortgage on a piece of real estate in Florida (Iarossi Dep., App. F, p. 44a) makes the inquiry into Petitioner's obligations *vis a vis* her attorney suspect. A reasonable jury could draw the inference that Iarossi was hostile to Petitioner and subjected her to special scrutiny because of her complaint of discrimination, an activity protected by Title VII and by the First Amendment.

> "Iarossi's treatment of Vingi with respect to her charge of discrimination was certainly suspect; his conclusions could

> not have been reached in good faith by any reasonable detective with adequate training in background investigations." (Bedard Aff., par. 17) (App. E)

The lower court improperly drew inferences in favor of the Respondents. A reasonable inference that should have been drawn from Iarossi's questions (including inquiries into matters protected by attorney-client privilege) about her discrimination charge, when coupled with other specific questions that Iarossi asked Petitioner (such as whether Vingi had ever been discovered by the local police department "lying drunk in her driveway" or whether she had "wild parties," or had had "gunshots fired" at her home -- all of which contained specific negative information that had been provided to Iarossi and which could have been verified with the municipal law enforcement agency), when compared with generalized information sought about male candidates, is that Respondents were "gunning" for her.[4] Such allegations had been accepted by Iarossi at face value and factored into his decision-making. As such, Petitioner asserts that the intentional.discriminatory nature of Respondents' conduct is for the trier of fact and that the appellate court erroneously affirmed the lower court's decision granting Respondents' motion for summary judgment.

CONCLUSION

For the reasons set forth, herein, Petitioner respectfully requests the Court issue a Writ of Certiorari.

Respectfully submitted,
Debra C. Vingi, *Pro se*
38 Salem Drive
North Providence, Rhode Island 02904
(401) 353-1789

DATED: May 18, 1998

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[4] Indeed, Petitioner was so taken aback by these questions, that she contacted the appropriate municipal police agency to determine whether any such incidents had been reported to it. The agency had no record of any such reports or responses.

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APPENDIX A

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1705

DEBRA C. VINGI,
Plaintiff, Appellant,
v.
STATE OF RHODE ISLAND,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND
[Hon. Francis J. Boyle, Senior U.S. District Judge]

Before

Selya, Circuit Judge,
Campbell, Senior Circuit Judge,
and Lynch, Circuit Judge.

Debra C. Vingi on brief pro se.
Jeffrey B. Pine, Attorney General, and Brenda A. Doyle, Special Assistant Attorney General, on brief for appellee.

December 29, 1997

Per Curiam. Plaintiff-appellant challenges the summary judgment dismissal of claims alleging gender discrimination in the rejection of her applications for admission to the State Police Training Academy. The claims were based on theories of disparate impact in the use of a written exam, background investigations and application processing, intentional discrimination, and alleged retaliation for the filing of administrative complaints.

Reviewing the judgment de novo, in light of the briefs, the appendix, and the record, we agree with the district court's decision and affirm substantially for the reasons set forth in the magistrate judge's May 24, 1996 Report and Recommendation. See Loc. R. 27.1.

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1705

DEBRA C. VINGI
Plaintiff, Appellant,
v.
STATE OF RHODE ISLAND
Defendant, Appellee.

JUDGMENT

Entered: December 29, 1997

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Rhode Island.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed. See Loc. R. 27.1.

By The Court:

Phoebe Morse, Clerk

By: Janice M. O'Neil
Chief Deputy Clerk

[cc: cc: Ms. Vingi, Ms. Duva, Messrs. Lee, Pine]

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Deborah C. Vingi	:	
Plaintiff	:	
v.	:	**C. A. No. 94-466B**
State of Rhode Island and	:	
Lincoln Almond, Governor,	:	
Defendants	:	

ORDER

After hearing argument on the Plaintiff's objections to Magistrate Judge Lovegreen's Report and Recommendation dated May 24, 1996, recommending the defendants' motion for summary judgment be granted on all counts of the complaint, and considering the materials submitted in support thereof, this court adopts in its entirety the thorough and well-reasoned Report and Recommendation as the findings and judgment of this court.

IT IS SO ORDERED.

ENTER:

s/_____
Francis J. Boyle, Senior Judge
May 20, 1997

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DEBORAH C. VINGI

JUDGMENT IN A CIVIL CASE

v

CA94-466B

STATE OF RHODE ISLAND ET AL

—— **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment enter for the defendants in accordance with the Order entered 5/20/97 adopting the Report & Recommendation of Magistrate Judge.

May 21, 1997

Date

David A. DiMarzio
Clerk

s/
Lorraine Kizier
(By) Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DEBORAH C. VINGI
PLAINTIFF

v. C.A. NO. 94-0466L

STATE OF RHODE ISLAND AND
LINCOLN ALMOND,
DEFENDANTS

REPORT AND RECOMMENDATION

Robert W. Lovegreen, United States Magistrate Judge

Presently before me is the defendants', State of Rhode Island and Rhode Island Governor Lincoln Almond (collectively "the State"), motion for summary judgment pursuant to Fed.R.Civ.P. 56. The plaintiff, Deborah C. Vingi ("Vingi"), has instituted this employment discrimination action under both state and federal law claiming that the State discriminated against her in denying her application for entry into the Rhode Island State Police Training Academy on the basis of her gender, purported sexual orientation, familial relationships and ethnicity. This matter has been referred to me for preliminary review, findings and recommended disposition. 28 U.S.C. § 636 (b)(1)(B) and Local Rule of Court 32(c). A hearing was held on April 23, 1996. After listening to the arguments of counsel and examining the memoranda submitted, I recommend that the State's motion for summary judgment be granted on all counts.

FACTS AND BACKGROUND

The essential facts are not in dispute. Since 1982, Vingi has been employed as a radio dispatcher by the Rhode Island Department of Environmental Management (DEM), Division of Enforcement. This Division is the law enforcement branch of DEM responsible for the enforcement of environmental laws and regulation.

Vingi first applied to the Rhode Island State Police Academy ("Academy") in 1983, but no Academy was held for that year. In 1985, Vingi reapplied passing the agility test, but failed the eye examination. In January, 1986, Vingi applied once again, passing the agility test, physical examination, initial psychiatric examination and the first interview, but failed to pass the final review board. According to Vingi, the state's rejection of her 1986 candidacy stemmed from a background investigatory report:

> "which contained inaccurate and derogatory information about Plaintiff's sexual orientation as well as other conclusory statements concerning Plaintiff's family, alleged connections to organized crime, and interactions of certain of Plaintiff's siblings with the criminal justice system, while omitting positive information about plaintiff."
> Pl.'s Amended Verified Compl. (par. 15)("Complaint").

In June, 1989, undeterred by her prior failings, Vingi reapplied for the Academy passing all portions of the application procedure, which for the first time included a written examination, but again failed to pass the final interview board. Vingi submitted another application in July, 1991, and again, sat for the Law Enforcement Candidate Record Examination ("LECRE"). By letter, Vingi was informed that the lowest passing grade was a score of 93, out of a possible 124, and that consequently, having a score of 90, she would not be further processed.

In October, 1992, Vingi filed a charge of discrimination with the Rhode Island Commission on Human Rights ("RICHR") and the United States Equal Employment Opportunity Commission ("EEOC"). Essentially, the charge alleged that the 1991 LECRE's 93 cutoff score was arbitrary having an adverse and discriminatory impact on women and minorities. On January 31, 1994, the RICHR determined that the charge contained no probable cause and concluded its investigation. Five months later, the EEOC likewise dismissed her charge.

Following her charge to the EEOC and RICHR, Vingi reapplied to the Academy in 1993, successfully completing the agility test and oral interview, but again was not selected for the Academy. It is unclear whether Vingi sat for the LECRE. Vingi contends that in March, 1994, she was interviewed by state police investigators and

asked about her working relationships with co-workers at DEM who had been previously interviewed in connection with a background investigation conducted as part of her 1986 application. Additionally, investigators inquired about her answering "no" to a 1993 application question, which asked whether the applicant had ever been a plaintiff in a civil suit, despite her prior charge to the EEOC and RICHR in 1992. In response, Vingi related that she understood the question as concerning only actual litigation, not a charge with an administrative agency.

Finally, on September 5, 1994, Vingi commenced this six count action. In Count I, Vingi contends that the 1991 LECRE had a disparate and discriminatory impact on women in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.* ("Title VII"). Count II alleges that the background investigations conducted by the State denied her equal employment opportunity in violation of Title VII based on ethnicity, gender, and familial associations. Count III contains federal equal protection and Title VII claims alleging that Vingi was excluded from the 1994 Academy, while a male candidate, allegedly receiving a score of less than the 93 cutoff, was admitted. In Count IV, Vingi contends that she was not selected to the 1994 Academy class in retaliation for filing administrative charges with the RICHR and EEOC in 1992. Vingi alleges in Count V that she was treated differently than other male applicants, in violation of the federal equal protection clause and Title VII, based on unsubstantiated allegations of her sexual orientation, hosting of "wild parties" and public intoxication. Finally, Count VI alleges violations of Rhode Island's Equal Protection Clause, Fair Employment Practices Act and Civil Rights Act of 1990.

During oral argument on this motion, Vingi dropped all claims of discrimination based on familial associations, ethnicity and sexual orientation. Additionally, she is no longer pressing Count III.

I. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) states that a party shall be entitled to a summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law." Fed.R.Civ.P. 56(c). When determining a motion for summary judgment, I must review the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in the nonmoving party's favor. *Mesnick v. General Electric Co.*, 950 F.2d 816, 820 (1st Cir. 1991), *cert. denied*, 504 U.S. 985, 112 S. Ct. 2965 (1992); *Griggs-Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir. 1990). Summary judgment should be granted where:

> "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Fed.R.Civ.P. 56(c); *see Goldman v. First Nat'l Bank of Boston*, 985 F.2d 1113, 1116 (1st Cir. 1993); *Lawrence v. Northrop Corp.*, 980 F.2d 66, 68 (1st Cir. 1992).

Summary judgment is a procedure that involves shifting burdens between the moving and the nonmoving parties. Initially, the burden requires the moving party to aver "an absence of evidence to support the nonmoving party's case." *Garside v. Osco Drug, Inc.*, 895 F.2d 46, 48 (1st Cir. 1990) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). Once the moving party meets this burden, the onus falls upon the nonmoving party, who must oppose the motion by presenting facts that show that there is a "genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986) (citing Fed.R.Civ.P. 56(e)); *see Goldman*, 985 F.2d at 1116; *Lawrence*, 980 F.2d at 68; *Garside*, 895 F.2d at 48 ("[A] 'genuine issue' exists if there is 'sufficient evidence supporting this claimed factual dispute' to require a choice between 'the parties' differing versions of the truth at trial.'" (quoting *Hahn v. Sargent*, 523 F.2d 461, 464 (1st Cir. 1975), *cert. denied*, 425 U.S. 904 (1976)). To oppose the motion successfully, the nonmoving party "may not rest upon mere allegation or denials of his pleading." *Anderson*, 477 U.S. at 256. Moreover, the evidence presented by the nonmoving party "'cannot be conjectural or problematic; it must have substance in the sense that it limns differing versions of the truth which a factfinder must resolve at an ensuing trial.'" *Mesnick*, 950 F.2d at 822 (quoting *Mack v. Great Atl. & Pac. Tea Co.*, 871 F.2d 179, 181 (1st Cir. 1989)). Indeed, "[e]ven in cases where elusive concepts

such as motive or intent are at issue, summary judgment may be appropriate if the nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation." *Medina-Munoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990). Thus, to defeat a properly supported motion for summary judgment, the nonmoving party must establish a trial-worthy issue by presenting "enough competent evidence to enable a finding favorable to the nonmoving party." *Goldman*, 985 F.2d at 1116 (citing *Anderson*, 477 U.S. at 249).

II. Law Enforcement Candidate Record Examination.

Vingi contends initially that the 1991 LECRE had a disparate and adverse impact on women. Specifically, Vingi points out the State has conceded that because the top 500 scores on the LECRE failed to produce sufficient numbers of women and minorities, this group or "banding" was expanded to 793 candidates eligible for further processing. Moreover, Vingi contends that the LECRE never underwent a transportability study to establish its validity. While conceding that the initial banding of 500 applicants was expanded to 793, the State counters that the LECRE had no adverse or disparate impact on women at either grouping. Consequently, the state contends that without first establishing a disparate impact on women, Vingi can not attack the validity of the examination.

A. Applicable Law.

As an initial matter, neither party has addressed whether the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991), signed into law November 21, 1991, applies to the present case. However, there is no dispute that Vingi sat for the 1991 LECRE and received her score prior to the Act's enactment. In *Landgraf v. USI Film Products*, __U.S.__, 114 S.Ct. 1483 (1994), the United States Supreme Court grappled with whether § 102 of the 1991 Civil Rights Act, amending a portion of Title VII, should be applied retroactively. In declining to apply the statute retroactively, the Supreme Court noted the general presumption against retroactive application to events preceding a statute's enactment. *Id.* at 1501. Because there appears to be no justification to depart form this general prohibition, the law in effect prior to the 1991 Act will be utilized to examine Vingi's claims.

B. Disparate Impact.

"It has long been understood that discrimination, whether quantitatively or qualitatively, is not always a function of a pernicious motive or malign intent. Discrimination may also result from otherwise neutral policies and practices that, when actuated in real-life settings, operate to the distinct advantage of certain classes of individuals." *E.E.O.C. v. Steamship Clerks Union, Local 1066,* 48 F.3d., 594, 600-01 (1st Cir. 1995). Title VII embodies such a reality in the concept of disparate impact discrimination. In practical terms, a disparate impact claim charges that facially neutral employer practice or examination led to a discriminatory impact on a particular group and that the test or practice cannot be justified as a business necessity. *Griggs v. Duke Power Co.,* 401 U.S. 424, 432 (1971).

The First Circuit has recently articulated the three elements that a plaintiff must demonstrate to make out a prima facie disparate impact claim:

> First, the plaintiff must identify the challenged practice or policy, and pinpoint the defendant's use of it. Second, the plaintiff must demonstrate a disparate impact on a group characteristic, such as (gender), that falls with the protective ambit of Title VII. Third, the plaintiff must demonstrate a casual relationship between the identified practice and disparate impact.

E.E.O.C. v. Steamship Clerks Union, Local 1066, 48 F.3d 594, 601 (1st Cir. 1995) (citations and footnote omitted). Once the plaintiff establishes a prima facie case, the burden of *production* shifts to the employer. *Cumpiano v. Banco Santander Puerto Rico,* 902 F.2d 148, 153 (1st Cir. 1990) ("prima facie case serves only to shift the burden of production to the employer, leaving the burden of persuasion intact"). The defendant may then either attack the plaintiff's prima facie case directly or, alternatively, acknowledge the plaintiff's showing, but demonstrate that the "challenged practice is job-related and consistent with business necessity." *Steamship Clerks Union, 48 F.3d at 602.*

In the present case, Vingi does not dispute the following relevant statistics concerning the 1991 LECRE: out of the 2,923 applicants who sat for the LECRE, 793 (27%) received a score of 93 or

better; out of the 323 women who sat for the LECRE, 88 (27.2%) obtained a score of 93 or better; and out of the 2600 men who set for the LECRE, 705 (27.1%) received a score of 93 or better. More importantly, Vingi does not take issue with the fact that the top 500 or so scores for the LECRE, the number constituting the initial banding, were comprised of 48 women (14.8% of the women who sat for the exam) and 434 men (16.6% of all men).

To support her claim, Vingi clings to a position paper submitted by the State to the RICHR, in which the State allegedly admits that the 1991 LECRE had a disparate impact on women:

> Initially, it was the intention of the Rhode Island State Police to take those with the top 500 scores on the written exam, provided they passed, for further processing, to arrive at 35 candidates who would ultimately be placed in the 1992 Academy. When this pool did not produce sufficient numbers of women and minorities, the pool was increased by 293 candidates, in other words, the top 793.

Vingi also asserts that the LECRE was never validated. However, Vingi has failed to demonstrate that a genuine issue of material fact remains over whether the LECRE had a disparate impact on women and, consequently, the LECRE's validity can not now be challenged.

To demonstrate a disparate impact, a plaintiff may utilize "statistical evidence revealing a disparity so great that is cannot reasonably be attributed to chance." *N.A.A.C.P. v. Town of East Haven,* 70 F.3d 219, 225 (2nd Cir. 1995); *see Hazelwood School District v. United States,* 433 U.S. 299 ("gross statistical disparities . . . may in a proper case constitute prima facie proof of a pattern of discrimination."). That is, statistical disparities must be sufficiently substantial thereby raising an inference of causation. *Watson v. Forth Worth Bank & Trust,* 487 U.S. 977, 995 (1988). Under the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607.4(D), a selection rate among women applicants of greater than 80% of the group with the highest selection rate is strong evidence of a lack of a disparate impact. Clearly, the undisputed statistical evidence at either banding unequivocally demonstrates that the 1991 LECRE failed to have a disparate impact upon women. At the initial 500 banding, 16.6% of the men sitting for the 1991 LECRE

received a score of 93 or better, while 14.8% of the women received the same score. At the 793 banding, the percentages are 27.2% for women and 27.1% for men.

Moreover, Vingi's reliance on the State's position paper is clearly misplaced. Viewed in the context of a lack of substantial statistical disparity in the initial banding, the position paper evidences a concern by the State over the *total* number of women in that grouping. The position paper is simply not a concession by the State that the LECRE had a disparate impact upon women as Vingi contends, but rather an acknowledgment that the *absolute* number of women at that banding remained low.

Thus, Vingi has failed to establish a prima facie case of disparate impact. Consequently, the question of the 1991 LECRE's validity need not be reached. *Connecticut v. Teal*, 457 U.S. 440, 446 (1982) (employer's burden of demonstrating employment requirement has a manifest relationship to employment arises only after plaintiff's prima facie showing); *see* 29 C.F.R. § 1607.1(B) ("These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results.").

III. Administrative Exhaustion.

In Count II of her complaint, Vingi alleges that the State's background investigations lacked objective, ascertainable standards leading to discrimination based on gender. The State responds that Vingi's failure to address this issue in her charge to the RICHR and EEOC precludes her from now litigating this claim.

A party may generally not litigate a Title VII claim in federal court prior to exhausting his or her administrative remedies. 42 U.S.C. § 2000e-5(c).

> "If there exists an appropriate state agency, such as the Commission in Rhode Island, a discrimination charge must first be filed with that agency during which time, the EEOC's administrative jurisdiction is suspended for sixty days."
> *Paulo v. Cooley, Inc.*, 686 F. Supp. 377, 382 (R.I. 1988).

If the issue persists subsequent to this sixty day period, the charge must be pursued at the EEOC before a claim may be filed in federal court. The Supreme Court has noted:

> "that filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in the federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling." *Zipes v. Trans World Airlines, Inc.* 455 U.S. 385, 393 (1982).

In the present case, there is no dispute that Vingi filed a timely charge. However,

> "[a] complaint related to that brought before the EEOC, but which was not itself made the subject of a separate EEOC (charge) must reasonably be expected to have been within the scope of the EEOC's investigation in order to meet the jurisdictional prerequisite." *Johnson v. General Electric,* 840 F.2d 132, 139 (1st Cir. 1988).

In turn, the scope of the investigation will be dictated by the facts in the charge. *Ramos v. Roche Products, Inc.,* 694 F. Supp. 1018, 1025 (D. Puerto Rico 1988). As the Seventh Circuit has noted, this test grants the plaintiff significant leeway "because most EEOC charges are completed by laypersons rather than by lawyers." *Cheek v. Western and Southern Life Insurance Co.,* 31 F.3d 497, 500 (7th Cir. 1994).

In her charge to the EEOC and RICHR, Vingi complains that the 1991 LECRE "cutoff score" had an adverse and disparate impact on women. There is no mention of any background investigations. In an attached, one and a half page statement "in support" of her charge, Vingi relates the facts and circumstances surrounding her numerous applications to the Academy. In reference to her 1986 application, Vingi states that it was her "understanding that a background investigation was conducted by members of the Department which may have contained inaccurate information about me and which omitted positive information." In discussing her 1990 application, Vingi relates that she does "not know whether a new background investigation was conducted or whether an updated investigation was made at that time." Other than these statements, there is no other relevant reference to any background investigation.

In her complaint, Vingi alleges that "Defendants failed to establish or enforce specific, written policies or procedures for the operation and administration of its background investigation and related personnel functions." Compl. par. 45. The result, alleges Vingi, has

been that:

> "[d]efendants have made subjective personnel decisions, including hiring decisions, without reference to validated, ascertainable standards and have departed from such standards as do exist in decision-making."
> *Id.* par. 46.

Moreover, the State:

> "improperly collected, reported, and summarized background information concerning Plaintiff . . . (as the State) failed to establish objective standards for the assessment or use of such information, its relevance, or appropriate importance."
> *Id.* par. 48.

Thus, Vingi alleges that she was unlawfully denied employment opportunity based upon her gender.

Clearly, the tenor of Vingi's administrative charge centered on gender discrimination based on the alleged arbitrary "cutoff score" of the 1991 LECRE and the State's subsequent lowering of that score after the results of that test had been analyzed. In context, her brief, rather vague, statements concerning background investigations, contained in her attached "supporting statement," have little relation to her complaint that the lack of ascertainable, objective standards governing the use of information gleaned through investigations led to subjective, discriminatory decisions by investigators.

This is particularly true when noted that from the submission of her charge to the EEOC and RICHR to the initiation of this lawsuit, Vingi has been represented by the same counsel. Thus, the rationale for extending significant leeway to Title VII plaintiffs in comparing an administrative charge with a subsequent complaint is simply not implicated. *See Cheek*, 31 F.3d at 500. To allow Vingi now, represented by the same counsel at all relevant stages, to levy a claim tangentially related to her administrative charge would eviscerate the EEOC's ability and authority to facilitate the investigation and resolution of Title VII disputes. Consequently, given the context of Vingi's statements and her retention of counsel at both the administrative and trial stages, I recommend that summary judgment be granted for the State with respect to Count II of her complaint.

IV. Retaliation Claim.

Count IV alleges that the "State and its agents treated (Vingi) more harshly or subjected (her) to increased scrutiny because of (her) filing of a complaint of discrimination with the (RICHR) and the (EEOC)." Compl. par. 64. Specifically, Vingi contends that she was not selected to the 1994 Academy because of answering "no" in response to a 1993 application question inquiring whether she had ever been a plaintiff in civil litigation. During a subsequent background interview, Vingi claims that Corporal Michael Iarossi ("Iarossi") of the Rhode Island State Police accused her of making a misleading statement on this question based on her prior filing of an administrative charge with the EEOC and RICHR in 1992.

In his rather extensive report dated April 8, 1994, Iarossi details his results of education, employment and neighborhood checks of Vingi, as well as a personal interview. From his interview of Vingi's fellow Department of Environmental Management co-workers, Iarossi discovered much opposition to Vingi's prospects of becoming a state trooper. The employees' essentially depicted Vingi, who works as a dispatcher, as confrontational, rude and abrupt in her dealings with co-workers and the public. The 1994 investigatory report also referenced an August 17, 1986 background, investigatory report conducted as part of Vingi's 1986 Academy application. In the 1986 report, numerous co-workers were interviewed. The majority of those interviewed did not recommend her for the job. Generally, her co-workers described her as possessing an attitude problem, foul language, a temper and having problems dealing with both the public and co-workers.

Iarossi's report also contains his observations and opinions from a personal interview of Vingi. After addressing various topics with Vingi, Iarossi inquires about her negative answer to a 1993 application question, which asked whether the applicant had ever been a plaintiff in civil litigation, despite her filing a charge with the EEOC and RICHR in 1992. According to the report, Vingi responded that she did not consider herself a plaintiff having never made a formal appearance in a courtroom concerning the charge.

In subsequently recommending Vingi as not a "suitable candidate for law enforcement employment," Iarossi lists two factors. First, "it was determined that the applicant has a propensity to short

temperedness with co-workers and the general public." Secondly, "it appears that the applicant deliberately attempted to mislead or deceive the (state police)" in indicating that she had never been a plaintiff in a civil action. Iarossi reasoned that "[s]urely, someone who has worked in a law enforcement entity for the past twelve years, as a civilian employee, would be able to basically define the term, plaintiff."

After reviewing the entire report, Vingi's claim of retaliation remains wholly speculative. Iarossi's report contains detailed findings and reaches a supportable, legitimate conclusion and recommendation that Vingi's application be rejected. Under applicable standards governing motions for summary judgment, at this juncture, Vingi must oppose the motion by presenting facts showing that there is a "genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986) (citing Fed.R.Civ.P. 56(e)); *see Goldman*, 985 F.2d at 1116; *Lawrence*, 980 F.2d at 68; *Garside*, 895 F.2d at 48. The evidence presented by the nonmoving party " 'cannot be conjectural or problematic; it must have substance in the sense that it limns differing versions of the truth which a factfinder must resolve at an ensuing trial.'" *Mesnick*, 950 F.2d at 822 (quoting *Mack v. Great Atl. & Pac. Tea Co.*, 871 F.2d 179, 181 (1st Cir. 1989)). Indeed, "[e]ven in cases where elusive concepts such as motive or intent are at issue, summary judgment may be appropriate if the nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation." *Medina-Munoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990).

As noted, Vingi has failed to proffer any evidence supporting her claim of retaliation. There is simply nothing to connect Vingi's allegations with the undisputed facts, other than unsupported speculation and improbable inferences. In contrast to Vingi's conclusory allegations, Iarossi's recommendation is based on a fairly extensive investigation. Consequently, in the absence of evidence to support her allegations, I recommend that summary judgment be granted for the State on this claim.

V. Equal Protection Claim.

In Count V, Vingi alleges that the State:

> " took adverse employment action against (her) on their unfounded and inaccurate suspicions, beliefs, conclusions, or reports that (she) had a lesbian sexual orientation, hosted 'wild parties' or had been publicly intoxicated." Compl. par. 4.

As a result, Vingi claims that the State denied her the federal equal protection of the law "by treating her differently to her detriment from male applicants or male incumbent members of the Division of State Police." *Id.* par. 75.

During oral argument on this motion, Vingi's counsel apprised the Court that any claims based on sexual orientation have been dropped. Moreover, Vingi has failed to proffer a scintilla of evidence to support her allegations of unequal treatment based on reports of hosting " 'wild parties' " and being publicly intoxicated. Consequently, I recommend that the State's motion for summary judgment be granted as to this claim.

VI. State Claim.

In her last claim, Vingi alleges the State violated Rhode Island's equal protection clause, Fair Employment Practices Act ("FEPA") and Civil Rights Act of 1990. For the reasons detailed below, I recommend that summary judgment be granted for the State on these claims.

A. Equal Protection and FEPA Claims.

Vingi contends initially that the State violated her right to equal protection secured by the Rhode Island Constitution. R.I. Const. Art. I, § 2. [1] Presumably, Vingi implores this Court to imply a private right of action for damages under this clause. Although the Rhode Island state courts have yet to address this issue, this Court has stated that "in certain circumstances," yet to be enumerated fully, a private right of action for damages "could" be implied under Rhode Island's equal protection clause. *Taylor v. State of R.I.*

---

[1] Article I, section 2 of the R.I. Constitution in pertinent part provides: "No person shall be deprived of life liberty or property without due process of law, nor shall any person be denied the equal protection of the law."

Department of Mental Health, 726 F. Supp. 895, 900-01 (D.R.I. 1989). Applying a *Bivens* analysis, *see Bivens v. Six Unknown Agents of Federal Bureau of Narcotics,* 403 U.S. 388 (1971), the *Taylor* Court, however, declined to imply a cause of action under Rhode Island's equal protection clause because "plaintiff's Title VII and FEPA claims provide alternative avenues for relief, thus, barring an additional state constitutional claim." 726 F. Supp. at 901. Consequently, as Vingi has also included claims under Title VII and FEPA, I recommend that the State's motion for summary judgment be granted on this claim.

Vingi also alleges that the State's action violated FEPA. R.I. Gen. Laws § 28-5-1 *et. seq.* The Rhode Island Supreme Court has held that in examining FEPA claims federal decisions construing Title VII should be used as guidance. *Newport Shipyard v. R.I. Commission for Human Rights,* 484 A.2d 893, 897-98 (R.I. 1984). For the reasons detailed above with respect to Vingi's Title VII allegations, I recommend that the State's motion for summary judgment be granted as to this claim.

B. The R.I. Civil Rights Act.

Lastly, Vingi asserts that the State's conduct violated the Rhode Island Civil Rights Act of 1990, R.I. Gen. Laws §§ 42-112-1, 2, which prohibits discrimination in the making of contracts on the basis of gender. Specifically, Vingi argues that she is a third-party beneficiary of certain consent agreements between the State and various United States governmental agencies, in which the State basically agrees not to discriminate in its hiring practices. The State counters that such a claim is barred by the doctrine of sovereign immunity and, in any event, is beyond the applicable three year statute of limitations.

Even assuming Vingi is a third-party beneficiary and the relevant consent decrees are contracts within the constraints of the Civil Rights Act of 1990, Vingi has failed to proffer any sustainable facts to demonstrate that a dispute exists over whether the State discriminated against her on the basis of gender. Consequently, I recommend that summary judgment be granted for the State on this claim.

CONCLUSION

For the reasons stated, I recommend that the State's motion for summary judgment be granted on all counts.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. Local Rule of Court 32; Fed.R.Civ.P. 72(b). Failure to file specific objections in a timely manner constitutes a waiver of the right to review by the district court. *United States v. Valencia-Copete,* 792 F.2d 4 (1st Cir. 1986); *Park Motor Mart, Inc. v. Ford Motor Co.,* 616 F. 2d 603 (1st Cir. 1980).

s/_____
Robert W. Lovegreen
United States Magistrate Judge
May 24, 1996

APPENDIX D

RELEVANT STATUTES

42 U.S.C. Sec. 1983:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subject, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. Sec. 2000e-2(a):

"**Employer practices.** It shall be unlawful employment practice for an employer-

> (1) to fail to refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex or national origin."

Rule 56, Federal Rules of Civil Procedure:

> (c) **Motion and Proceedings Thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment

sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

VINGI

v. C.A. 94-466P

STATE OF RHODE ISLAND, *et al.*

AFFIDAVIT OF NORMAN BEDARD

COMES NOW AFFIANT Norman L. Bedard, having been duly sworn, and says and deposes as follows:

1. I am Norman L. Bedard of Lincoln, Rhode Island.
2. I have previously testified before this Court and other courts as an expert in public personnel administration and I was appointed by Judge Bruce Selya as a special master of this Court in a complex public personnel matter. I served as associate administrator of the Rhode Island Division of Personnel, and the attached resume briefly but accurately sets forth my education and experience.
3. The State of Rhode Island cannot validate its state police selection practices on the basis of bottom line results. A reasonable public personnel manager would know that the U.S. Supreme Court in rejected such a bottom-line justification in *Connecticut v. Teal,* 102 S.Ct. 2525, 2532-33 (1982), in which a written examination had a negative, disparate impact on minorities.
4. Similarly, a reasonable public personnel manager would know that a post-test manipulation of cut-off scores as happened in the state police selection in question, even if such the manipulation had the effect of equalizing test scores, would not legitimize the examination as administered, would not preclude Plaintiff from establishing a *prima facie* case of discrimination, and would not provide the State with a legitimate defense.

5. A reasonably knowledgeable public personnel manager would know that the written examination results must be assessed as they were prior to the manipulation of the cutoff point. As associate administrator of personnel for the State of Rhode Island and since, I have been aware that the State of Rhode Island can lawfully use a written examination of other selection device which has a discriminatory or disparate impact on a protected class only if the State can demonstrate, using recognized methodologies, that the selection device accurately and reliably measures skills relevant to effective performance in the position for which the test is used.

6. The Uniform Guidelines on Employee Selection Procedures (Uniform Guidelines), 29 C.F.R. Part 1607 (1984), apply to any selection procedure "used as a basis for making employment decisions," including the selection process as a whole. *Id.*, Part 1607.2(C). Moreover, the Uniform Guidelines do not distinguish among selection practices, regardless of whether they are objective, subjective, or mixed:

> *Q. Selection procedure.* Any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms. 29 C.F.R. 1607.16(Q)

5. As a reasonable and knowledgeable personnel manager, I believe that discrete pass/fail barriers such as the written examination or the background investigation process having adverse impact must be individually validated even if there is no "bottom line" disparate impact for the entire multicomponent selection process. *Teal,* 457 U.S., at 452.

6. In particular, I believe that the Defendants' background investigation process is, within the meaning of Title VII, a subjective selection practice with discriminatory impact for which no justification has or can be shown.

7. As a reasonable and knowledge public personnel expert I believe that validation in the abstract is insufficient where disparate impact exists. In this instance, I have personal knowledge that the Rhode Island State Police had not conducted any job task analysis prior to the adoption of the 1990 selection process. The State appears to relied upon a job specification with a generalized description of a trooper's functions. To the best of my knowledge, no adequate job task analysis was performed before the selection processes challenged by Vingi were adopted.

8. I testified as an expert witness in *Legault v. aRusso,* and I believe that the State's job descript n here suffers from the same defects as Judge Barbadoro pointed out in *Legault:*

> The specification's generality thus prevents it from being an adequate means of determinin whether the agility and obstacle course tests have co t validity. *See e.g. Vulcan Pioneers, Inc. v. New Jers Dept. of Civil Serv.,* 832 F.2d 811, 815-56(3d Cir. 198 *Jones v. New York City Human Resources Admin.,* 39 F.Supp.1064, 1081 (S.D.N.Y.), *aff'd,* 528 F.2d 696 (2d Cir.), *cert denied,* 429 U.S. 825 (1976). Given "the unlikelihood that an examination prepared without benefit of a probing job analysis will be content valid," the absence of such an analysis requires the examination's proponent to "carr[y] a greater burden of persuasion on the issue of job-relatedness." *Guardians,* 633 F.2d at 242-43.

9. I have reviewed the Affidavits of Major James Rowley and Captain David Driscoll of the Rhode Island State Police and of Inspector James Cotter and Special Agent James Gump and, on the basis of my personal and professional experience, I find the statements and opinions in these affidavits to be accurate statements of years of institutionalized sex, race, and ethnic discrimination by the state police which extended into the application procedures challenged by Vingi; into the selection and promotion of the officials devising and running the challenged selection process and into the corporate employment environment in which subjective and standardless decisions were made.

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10. I believe that, regardless of the intended fairness of the state police selection process or the quality of written testing, the entire trooper selection process is short-circuited by the practice of allowing individual detectives to decide who is "suitable to join the ranks of the Department." (Iarossi deposition, p. 140).

11. As a personnel expert familiar with the selection of law enforcement personnel, I find it reasonable to believe that discrimination resulted from the conduct of the background investigations of Plaintiff in 1986. There are no objective criteria or guidelines for the collection, assessment (including both general relevance and relative importance) or utilization of information or guidelines for the manner in which such an investigation is conducted. Such subjective, standardless decision-making almost inevitably results in discrimination against women and minorities. More importantly, the practice substitutes the psychological appraisal by the background investigator for the professional psychological examination and review required by state law.

12. In the absence of such guidelines, individual caprice, whim and bias often become the cornerstones of decision-making. As Detective Iarossi testified at deposition, the only guidelines which existed in 1994 consisted of an instruction sheet setting forth the format for the written report which summarized the information obtained. ("It basically lays out how they would like your final detective activity report to look like. It doesn't -- it doesn't tell you what to put in your report, however, it describes what portion of the report should go first, what should go second and so on leading up to the conclusion of the report." Iarossi deposition, page 22.) In my opinion, these standards and instructions are inadequate, will inevitably result in discriminatory effect and alternative, less discriminatory practices have been available and in common use for many years.

13. Iarossi's testimony concerning the lack of substantive guidelines for background investigations was corroborated by Sergeant Messier (Messier deposition, page 19). In my opinion, the lack of objective guidelines for the conduct of

the background investigation becomes even more critical with regard to the 1994 selection process where the background investigation was essentially a "pass-fail" mechanism. (Messier deposition, page 25) and where the persons conducting the investigations had no formal training other than "being taught how to do a background investigation by another detective in the detective division." As Detective Iarossi admitted, such training consisted of "[being shown a background investigation activity report and having it explained to me how a report should read and what categories to list on the report and what persons should be interviewed." (Iarossi deposition, page 19; Messier deposition, page 19.)

14. Importantly, Detective Iarossi further testified that in 1994 persons conducting background investigations were instructed to include their recommendations "on any background investigations conducted by members of the detective division (Iarossi deposition, pages 2, 5, 140) and that persons who were not recommended by the persons conducting the investigation were not processed further in the selection process and the decision whether to recommend a candidate was left to the discretion of the person conducting the investigation. In view of the testimony of Iarossi and Messier, my opinion is that the process described by Iarossi and Messier is wholly inadequate and will result in discrimination. The sole legitimate purpose of the background investigation is to gather facts concerning the applicant and to verify representations made by the applicant in written applications or otherwise. The process as described allows individuals to veto candidates without the application of any validated, objective, or ascertainable standards.

15. In my view, the problem created by the lack of objective, ascertainable standards for investigative review or recommendation and the absence of any specific training of the persons conducting the background investigations is further compounded by the failure of investigators to identify any bias or prejudice on the part of the persons contacted or interviewed during a background investigation.

Detective Iarossi, who conducted the background investigation of Vingi in 1994, stated that, with regard to the persons interviewed, "Who they are, whether they are biased or prejudiced witnesses, I have no idea." (Iarossi deposition, page 15.)

16. I believe that the failure to establish guidelines for the conduct of the background investigation more than likely had a disparate, negative impact on Vingi, as opposed to the males whose background investigations were conducted by Detective Iarossi. Detective Iarossi testified that he conducted the investigations of John Charbonneau, Timothy Sanzi (who had been identified by Vingi as having been graduated from the 1994 Training Academy class) and another unidentified individual, as well as Plaintiff Vingi. While Detective Iarossi refused to identify the fourth individual either by name or by gender, he later admitted that he did not conduct a personal interview with this candidate because the candidate had withdrawn his name from consideration.

17. The lack of objective, ascertainable criteria becomes even more troubling when viewed in light of the ostensible reasons for Detective Iarossi's determination to not recommend Vingi for further processing. Detective Iarossi testified as to his belief that Vingi had deliberately misled the State Police on her 1993 application and because Detective Iarossi "did not find her suitable to join the ranks of the Department." (Deposition, page 140.) Detective Iarossi also stated that he believed that Vingi had problems with co-workers, supervisors and members of the public (Deposition, page 140), despite the fact that a review of Vingi's personnel file did not reveal any complaints from members of the public, her supervisors or co-workers (Deposition, pages 142-144). Moreover, while Iarossi accepted, at face value, criticisms of Vingi's social skills from unnamed male sources, he refused to accept Vingi's statements that she did not have problems dealing with her co-workers, supervisors or members of the general public. (Deposition, pages 151-152.) Particularly in light of this mischaracterization of information which an experienced

state police detective should be able to understand and report on, in my opinion, Iarossi's investigation and report could not be accepted by any reasonable personnel administrator as a fair and objective background investigation; it is incomplete; inaccurate and unsubstantiated in material parts; and hostile to the applicant. Iarossi's treatment of Vingi with respect ot her charge of discrimination was certainly suspect; his conclusions could not have been reached in good faith by any reasonable detective with adequate training in background investigations.

18. In sum, I believe that: (a) the 1994 background investigation process operated as a pass/fail selection device or that untrained, unguided investigators were permitted to create crude psychological profiles or draw other inferences from information which they never bothered to cross-check or otherwise validate "(Who they are, whether they are biased or prejudiced witnesses, I have no idea." Iarossi deposition, p. 15.); (b) the background process was an invalidated, subjective selection device, and had disparate impact upon Vingi and a protected group or groups; and (c) the manner in which the background investigations were conducted ensured that final selection decisions were skewed by a wholly subjective, invalidated, and non-job-related process which violated the standards established by the Uniform Guidelines.

19. As a matter of practice, the background investigation and evaluation process as implemented by Iarossi is not-acceptable as a lawful selection device. Detective Iarossi testified that in 1994 persons conducting background investigations were instructed to include their recommendations "on any background investigations conducted by members of the detective division" (Iarossi deposition, page 25, 140) and that persons who were not recommended by the persons conducting the investigation were not processed further in the selection process and the decision whether to recommend a candidate was left to the discretion of the person conducting the investigation. The process described by Iarossi and Messier is wholly inadequate and will result in discrimination. The sole legitimate

purpose of the background investigation is to gather facts concerning the applicant and to verify representations made by the applicant in written applications or otherwise. The process as described allows individuals to veto candidates without the application of any validated, objective, or ascertainable standards.

20. I have seen nothing which indicates that the particular background investigation/evaluation process used here was justified by some valid business necessity. I know that alternative, less discriminatory practices exist, are in common use, and were available to the state police.

The foregoing statements contained in Paragraphs 1 through 20 are true and correct to the best of my personal knowledge or belief.

s/_____
Norman L. Bedard

State of Rhode Island and Providence Plantations
Providence County, Sc.

On April 9, 1996, Norman L. Bedard, a person known to me, personally appeared before me, an official empowered to administer oaths, and, having been duly sworn, subscribed hereto.

s/_____
Ina P. Schiff
Notary Public

NORMAN L. BEDARD

PRINCIPAL, NORMAN BEDARD & ASSOCIATES

Consulting in personnel management and labor relations matters for public and private sector clients, including health care providers, in both unionized and non-unionized environments.

ASSOCIATE PERSONNEL ADMINISTRATOR,
STATE OF RHODE ISLAND

Over thirty years' experience in the R.I. Division of Personnel, managing selection, testing, promotion, retirement and related matters, including statutory and regulatory compliance, for largest workforce in the state; made or approved thousands of personnel decisions in hiring, promotion, discipline, firing, and retirement of state employees, including law enforcement and other public safety personnel.

Developed, implemented, and managed training systems and programs, testing and selection programs, promotional and retention systems, and job task analyses, including analyses of public safety positions, including law enforcement officers.

Managed public service careers program; developed validation techniques, policy development and review systems; policies for affirmative action, regulatory compliance, and quality control; oversaw personnel classification activities; before appointment as Associate Personnel Administrator, rose through the ranks from personnel analyst to senior analyst to chief personnel analyst.

REPRESENTATIVE MAJOR CONSULTING ASSIGNMENTS

SPECIAL MASTER, UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Appointed by Judge Bruce M. Selya to oversee compliance by State of Rhode Island with implementation of decree in class action suit protecting rights of military reservists.

EXPERT WITNESS

Expert testimony regarding firefighter selection methodologies, disparate impact, and testing cited with approval by the United States District Court for the District of New Hampshire in *Legault v. aRusso,* 842 F.Supp. 1479 (D.N.H. 1994)

UNITED STATES CIVIL SERVICE COMMISSION

Review and final drafting of U.S. Civil Service Commission's official monograph, Manual for Job Analysis, the guide for public sector job task analyses

NEW ENGLAND PUBLIC PERSONNEL COUNCIL

Volunteer executive director and cofounder of multistate organization, established to direct research, share information, and develop multistate personnel selection, compensation, and personnel techniques; established interstate personnel administration database, uniform affirmative action guidelines, and standardized validation techniques

RHODE ISLAND CITIES AND TOWNS

Assisted cities in professional personnel techniques and regulatory compliance under the Intergovernmental Personnel Act which gave municipalities the expertise of state and federal personnel experts at no cost to the local governments

UNITED HEALTH CARE FACILITIES

Labor relations and personnel management consulting, job task documentation and development, contract negotiation, and conflict resolution

MILITARY SERVICE

COLONEL (RET.), UNITED STATES ARMY RESERVE

Combat service, Korean War; other services included command of military police battalion

GRADUATE, UNITED STATES ARMY COMMAND AND GENERAL STAFF COLLEGE

Completed numerous military schools and training programs, including professional schools in military police and law enforcement fields, civil disorder control, and military police operations and management

TEACHING

Adjunct Assistant Professor
Providence College

Lecturer in Public Personnel Administration
Northeastern University, University of Rhode Island, and
Rhode Island College.

EDUCATIONAL BACKGROUND

A.B., Providence College

Graduate studies, University of Rhode Island and numerous training courses and programs in public administration, personnel administration, data processing systems, and related disciplines

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DEBRA VINGI

VS. C. A. NO. 94-466P

STATE OF RHODE ISLAND, *et al*

_____/

DEPOSITION OF MICHAEL P. IAROSSI, a witness, in the above-entitled cause, taken on behalf of the Plaintiff, pursuant to notice, before Jo Anne M. Sutcliffe, Notary Public in and for the State of Rhode Island, at the offices of the Attorney General, 72 Pine Street, Providence, Rhode Island, on May 10, 1995, at 9:30 a.m.

APPEARANCES:

FOR THE PLAINTIFF:	INA P. SCHIFF, ESQ.
FOR THE DEFENDANT:	ROBIN FEDDER, ASSISTANT ATTORNEY GENERAL and BRUCE BOWIE, ESQ.
ALSO PRESENT:	DEBRA VINGI

A. I don't know that.

Q. Is the applicant given specific factual details about events that have been alleged that are contained in a background investigation?

A. Again, I don't know that.

Q. What effort is made generally to identify any bias or prejudice on the part of the persons contacted or interviewed during a background investigation?

MS. FEDDER: Objection. You can answer.

THE WITNESS: I can answer that?

MS. FEDDER: Yes.

A. We go out and we interview any persons that are listed as references on the applicant's application. Who they are, whether they are biased or prejudiced witnesses, I have no idea.

Q. Do you interview only the people who are listed as references on an applicant's application?

A. No.

Q. Whom else might you interview?

A. We will interview former teachers,

in the --

MS. FEDDER: Excuse me. You want to know what training this witness specifically has had in conducting background investigations?

MS. SCHIFF: Let's deal with him first beeause his knowledge of his own background I think is -- he is the best person to tell me that.

MS. FEDDER: Objection. You can answer.

A. I recall being taught how to do a background investigation by another detective in the detective division.

Q. And who was that?

THE WITNESS: I'm sorry?

Q. Who was that detective?

MS. FEDDER: Objection: You can answer.

A. I don't recall who it was. Being shown a background investigation activity report and having it explained to me how a report should read and what categories to list on the report and what persons should be interviewed.

fill in answers to questions or information.

Q. Okay.

A. It is merely a guideline.

Q. And the fill-in answers to questions or information is how I will describe the Falmouth forms.

A. Okay.

Q. Okay. Your document, you say, is used as a guideline?

A. That's correct.

Q. Okay. Can you tell me what you mean by that?

A. It basically lays out how they would like your final detective activity report to look like. It doesn't -- it doesn't tell you what to put in your report, however, it describes what portion of the report should go first, what should go second and so on leading up to the conclusion of the report.

Q. Now, you've used the term detective activity report, can you tell me what that is?

A. As a member of the detective division you memorialize any investigation or any interviews in what's called a detective activity report and it's a report that details detectives' activity and it is a dictated

our recommendations on any background investigations conducted by members of the detective division.

Q. Who issued the directive to the investigators to include their recommendation?

MS. FEDDER: I'm sorry, I didn't hear.

MS. SCHIFF: I asked who used the directive to include the investigator's --

A. I don't know who would have issued that.

Q. Was that a written directive?

A. I believe it was spelled out in that outline that we were provided with.

Q. Next question. What outline were you provided with? Can you describe it for me?

A. It was a guideline -- guideline type form that each detective was provided with. It is the form I referred to earlier in this interview. A portion of that guideline form indicated that recommendations shall be included in the detective's report.

Q. Now, were all persons in the detective division issued this guideline?

MS. FEDDER: Objection. You can answer if you know.

Q. In 15 years on the State Police and as an adult of at least average intelligence you also know what the Rhode Island Human Rights Commission is, do you not?

A. I could not define for you what their role is, where they are located.

Q. Do you know whether the Human Rights Commission is a court?

MS. FEDDER: Objection. To the extent that is asking for a legal interpretation of some public agency I object to the question, but you can answer on your personal experience and knowledge.

A. I know it is not a court. It is not a district court; it is not a superior court; it is not a supreme court.

Q. Indeed it is not a part of the judicial system of the State of Rhode Island, isn't that correct?

MS. FEDDER: I object to that question and -- I object to that question. I object to the extent that it calls for a legal conclusion which is misleading to this witness, something that may or may not

A. I was told she filed a lawsuit. Now, as a result of the live interview we've learned that she filed an action, is that the term you are using?

Q. Uh-huh.

A. Before the Rhode Island Human Rights Commission, and again, I am not an attorney, but I understand when an individual files a lawsuit it is usually in court and that was my understanding.

Q. So now we are distinguishing I think between lawsuits and actions. Is that corrrect? Am I understanding your last answer correctly?

A. I can't accept your challenge to debate the definition of action versus lawsuit.

Q. Well, no matter what, wouldn't it be fair to say you thought she was lying?

A. I thought she was misleading the State Police, that's correct.

Q. And even after the fact that she told you she had not filed a lawsuit you still thought that she was misleading, didn't you?

MS. FEDDER: You can answer.

A. Yes.

Q. Even though the precise wording of the application and the question that was asked, "Have you ever been plaintiff or defendant in a civil court action," am I reading the question properly?

A. Yes; I have read the question.

Q. Okay. Have I read the question properly to you?

A. Yes, you have.

Q. And after that you still believe that she was misleading?

A. I believe so, yes.

Q. Although you've also distinguished between a civil court action and an action, it seems, filed before another agency?

A. Uh-huh.

Q. The question didn't ask for actions filed in front of administrative agencies, does it?

A. No, it didn't.

Q. What else did you ask Miss Vingi during the personal interview?

A. Probably asked her how she -- how she enjoyed her present employment, how she got along with her fellow employees.

Q. Did you ask her anything else about the complaint that she had filed?

A. I don't recall.

Q. Did you ask her who her attorney was?

A. I believe I did, yes.

Q. And did she tell you?

A. I think she told me that you were her attorney.

Q. Did you ask her how she was paying me?

A. Yes, I did.

Q. Why?

A. I wanted to know.

Q. What relevance was it?

A. I wanted to know.

Q. Other than idle curiosity what relevance was it?

MS. FEDDER: Objection to the characterization. You can answer the question.

A. I don't think I have to prove the relevance of that question.

Q. What business was it of the Rhode Island State Police as to how she was paying her attorney?

A. She volunteered to come up for the interview and I was free to ask whatever questions I wanted to ask.

Q. Including information that perhaps might have been confidential?

MS. FEDDER: Objection. I would like a minute.

(BRIEF PAUSE)

MS. FEDDER: Can we have the last question?

(PREVIOUS QUESTION READ
BACK BY COURT REPORTER)

MS. FEDDER: Objection to the characterization -- what's the question before that?

(PREVIOUS QUESTION READ
BACK BY COURT REPORTER)

MS. FEDDER: The witness can answer.

A. My reason for asking those questions was to determine if Miss Vingi was or had attempted to mislead the State Police, if in fact she filed a lawsuit, if she hired an attorney and if that included information that you perceive to be confidential, that's the reason those questions were asked.

Q. Okay. Miss Vingi -- you asked Miss Vingi whether she had hired an attorney, she said yes, is that correct?

A. Yes.

Q. You asked Miss Vingi who her attorney was and she identified me, is that correct?

A. That's correct.

Q. She didn't hide either of those two things, did she?

A. No, she did not.

Q. Okay. She was straightforward and answered your questions?

A. She was.

Q. Okay. What then was the relevance of asking her how she was paying me?

MS. FEDDER: Objection: That's been asked and answered. The witness said that the questions were asked to determine whether Miss Vingi was misleading the State Police, but you can answer the question again.

Q. What was Miss -- what would have been misleading in the information Miss Vingi had just provided to you that necessitated your asking her how she was paying for her attorney?

A. Nothing prevented myself from asking her how she was paying her rent. If I wanted to ask her how she paid her utility bill every month, I could ask that. And if I asked her how she was paying for her attorney, she answered the question, she volunteered the answer and we went on to the next question.

Q. Did you ask her how she paid her rent?

A. No, I did not.

Q. Did you ask her how she paid her utility bills?

A. No, I did not.

Q. Isn't it really fair to say that because of the brouhaha that presently exists between myself and the State Police that was the reason for your asking her how she was paying me and whether she was paying me?

MS. FEDDER: Objection. The witness already testified that the reason the questions were asked was to determine whether Miss Vingi was misleading the State Police. I object to your putting words into the witness' mouth. You can answer the question.

A. That is totally false and inaccurate.

Q. Okay. I will ask you again. If you did not ask her how she paid her rent and how she was paying her utilities why you found it necessary to ask her how she was paying for her attorney?

MS. FEDDER: Objection. It has been asked and answered. You can answer.

A. I've answered it several times.

Q. Answer it again and make me happy.

A. How many times are we going to go over it?

Q. A lot.

MS. FEDDER: You can answer.

A. She volunteered to respond to State Poflice headquarters for the interview. I felt she was misleading the State Police in her application and we went over those areas where I felt she was misleading the department and I then asked her if she in fact filed a lawsuit or an action, if she hired an attorney, how she was paying for that attorney and those were general investigative questions that any curious, good, thorough investigator would ask.

Q. Did you ask her how she was paying her mortgage on her property in Florida?

A. No, I did not.

Q. Why not?

where the investigator was to provide his or her own recommendation, is that correct?

A. That's correct.

Q. What was your recommendation with regard to Miss Vingi?

MS. FEDDER: You can answer.

A. I did not recommend her for employment with the State Police.

Q. What was your reason or what were your reasons for not recommending her?

A. No. 1, I felt -- I felt she deliberately tried to mislead the Department of State Police in her application, and secondly, I determined that she had extreme difficulties in dealing with people on a daily basis while in the performance of her duties. She had problems with co-workers, supervisors and the public in general and she would not be -- I did not find her suitable to join the ranks of the department.

Q. What was the basis for your conclusion that she had deliberately tried to mislead the Rhode Island State Police?

MS. FEDDER: Objection. That's been asked and answered but you can answer the

not to answer.

Q. Did you during the course of your background investigation review Miss Vingi's personnel file from the Department of Environmental Management?

MS. FEDDER: You can answer that question yes or no.

A. Yes, I did.

Q. Did that file contain any complaints from members of the public concerning Miss Vingi's conduct?

MS. FEDDER: You can answer that question yes or no.

A. No.

Q. Would it be fair, then, to say that the conclusion that Miss Vingi had problems dealing with the public in general was based upon information given to you by her co-workers or supervisors?

MS. FEDDER: Instruction not to answer.

Q. How did you in the absence of complaints in her personnel file from members of the public how did you conclude that Miss Vingi had difficulty dealing with members of the public?

MS. FEDDER: I would instruct you not to answer that question if you cannot answer it without referring to the identity of individuals from whom you acquired information. If you can answer the question without referring to the identity of anybody, you can answer the question.

A. I can't answer that question without referring to the identity of a person who I spoke with.

MS. FEDDER: Person or persons.

A. Persons. Persons.

Q. When you reviewed Miss Vingi's personnel file -- strike that. From whom did you obtain the personnel file?

MS. FEDDER: You can answer that question.

A. I responded to the DEM office located on Hayes Street in Providence where I was permitted access to the file.

Q. And that was a file maintained by which official at DEM?

A. I believe Mrs. Mouradjian is the Director of Personnel for DEM.

Q. When you obtained the personnel file from Mrs. Mouradjian were there any disciplinary notices or warnings in the file that had been provided by Debra Vingi's supervisor?

A. No.

Q. Where there any complaints or materials that had been included in her personnel file that had been provided by co-workers?

MS. FEDDER: Could you read the question?

(PREVIOUS QUESTION READ BACK BY COURT REPORTER)

MS. FEDDER: Objection to the form of the question. If you understand the question, you can answer that yes or no.

A. No.

Q. Were there any documents in her personnel file which indicated that Miss Vingi had filed one or more labor grievances?

MS. FEDDER: You can answer that question yes or no.

A. Yes.

Q. Did you review those grievances?

MS. FEDDER: You can answer.

A. I don't recall if I reviewed them or not.

A. Uh-huh.

Q. How do you define at length?

A. Well, certainly not two or three minutes, probably anywhere from 20 to 30 minutes.

Q. And based upon your 20 to 30 minute interview you determined that none of the individuals whom you interviewed had a chip on their shoulder or an ax to grind with regard to Debbie Vingi, is that correct?

A. That's correct.

Q. And you took, it be fair to say that you took their words at face value?

A. Yes, I did.

Q. During your personal interview with Debra Vingi did you ask her about any of the problems that had been identified to you?

A. I asked her if she had any -- if she had any problems in dealing with her fellow employees, her supervisors and she advised me no.

Q. And you didn't believe her, did you?

A. I knew differently as a result of conducting my investigation.

Q. You would not accept her position at face value, isn't that correct?

A. My investigation and my interviews revealed a totally different answer to that question other than what she told me.

Q. You wouldn't accept what she told you at face value, isn't that correct?

MS. FEDDER: Objection. It has been asked and answered.

MS. SCHIFF: Are you instructing him not to answer?

MS. FEDDER: No, I'm instructing him. His interviews -- that was your last question, his interviews

revealed a totally different answer, but if you want him to say it again, he'll say it again.

MS. SCHIFF: Yes, I do.

A. I conducted my interview and my interview produced an entirely different answer other than the answers that Debra Vingi gave me when I asked her those questions.

MS. SCHIFF: I'll move to strike that answer as I should have moved to strike the earlier answer because it is not responsive. It requires a yes or no answer.

Q. Did you accept Debra Vingi's statements that she did not have problems with her co-workers

or procedures which dictate how oral interviews are conducted?

MS. FEDDER: You are talking about the interviews of the applicants?

MS. SCHIFF: Well, start with those oral interviews and then I'm going to talk about oral interviews of witnesses and other persons in general.

MS. FEDDER: But you are asking this witness about the oral interviews that he would have conducted of the individual applicants?

MS. SCHIFF: That's correct.

MS. FEDDER: Policies and procedures. Okay. You can answer.

A. None other than what's spelled out in that guideline that was provided to us when we began the background.

Q. Did you inquire of Mr. Charbonneau's ability to pay his bills or into her personal finances during the personal interview?

A. Yes

MS. FEDDER: Instruction not to answer.

Q. Did you during the personal interview that you conducted with Mr. Sanzi inquire into his ability to pay his bills or -- I'll end it at that without the or.

MS. FEDDER: When you are asking these questions you mean did he conduct a credit check as of -- as he did with Debra Vingi? Is a what you are asking or are you asking the specific question did you ask specifically about his ability to pay?

MS. SCHIFF: Specifically to pay.

MS. FEDDER: Okay. I instruct the witness not to answer the question. And I give the same comment on the record which I have done through all the other questions that you've asked about the other applicants that this witness interviewed.

Q. Did you actually order the credit report for each of the four persons whose background investigations you were assigned to do?

A. No.

Q. Were the credit reports ordered -- for lack of a better term, en masse as a group for all the people who were being interviewed?

A. Yes.

APPENDIX G

RHODE ISLAND STATE POLICE
HEADQUARTERS
DETECTIVE DIVISION
NORTH SCITUATE, RHODE ISLAND

April 8, 1994

TO: Captain Francis R. Muzerall, Detective Commander

SUBJECT: Background Investigation of Applicant Debra C. Vingi, DOB: 5/11/56, or 171 High Service Avenue, North Providence, Rhode Island 02911

INTRODUCTION/SUMMARY/RECOMMENDATION

This detective was assigned to conduct a complete and thorough background investigation into the above captioned individual, who is an applicant for employment as a Trooper, with the Rhode Island State Police. A complete background investigation into Ms. Vingi, was conducted by Detective Corporal Robert Mattos, and documented in an activity report, dated 8/17/86. This detective will refer to that report during the course of this Detective activity report.

EDUCATION CHECK

Debra Vingi attended St. Mary's Bayview Academy, from 9/09/71 through 6/07/74. She was enrolled in a College Preparatory Program. Total days absent was sixteen over a four year period, and she received A's and B's for quarterly grades through out her high school career. She was ranked number six in a senior class of 144 individuals, in 1974. There are no reports or information evidencing any disciplinary problems during her high school years.

Ms. Vingi attended the Bryant College from 9/74 through May, of 1979, and graduated with a Bachelor of Science Degree, in Business Administration. A check with the security department at Bryant College reveals nothing derogatory regarding Ms. Vingi. During the time period 12/16/82 through 12/20/90.

Ms. Vingi participated in several Spanish language courses at the CCRI campus' in Lincoln and Warwick. The security office at CCRI was unable to provide this writer with any derogatory information with regard to Ms. Vingi.

EMPLOYMENT CHECK

Ms. Vingi is presently employed by Rhode Island Department of Environmental Management, Division of Enforcement and works as a Radio Dispatcher at their Headquarters, located at 83 Park Street, Providence, Rhode Island. She has been so employed in this capacity since April 4, 1982. Her present supervisor is Captain David Tyler.

In addition to this Detective's findings with regards to Ms. Vingi employment background please refer to the report of Detective Corporal Robert Mattos, dated 8/17/86, which is attached hereto and made a part thereof.

This writer contacted the following persons [ ] [ ] she performs her assignments [ ] is not aware of any problems she may have [ ] noted that she has a very low tolerance for verbal confrontations from both co-workers and the general public. However [ ] would recommend Debra Vingi to the State Police.

This Detective spoke with [ ] described her as physically capable of performing the duties of a Rhode Island State Trooper. However, he describes her "phone attitude as less than desirable" [ ] advised that the radio room assignment at D.E.M. Headquarters is a very stressful situation. [ ] was aware of complaints against Ms. Vingi, by co-workers at D.E.M. However, [ ] stated "I would not say anything derogative towards her". [ ] added she could probably handle the assignments.

This writer contacted [ ] would communicate by both telephone and radio to D.E.M. Headquarters, in Providence [ ] recalls having a very difficult time in dealing with Ms. Vingi, and would not recommend her. [ ] stated that perhaps Ms. Vingi is a good street person and would be a good street cop, however, she is not a very good people person.

This detective contacted [ ] to arrange for a time period for this writer to review the personnel jacket of Ms. Vingi at D.E.M. Headquarters. This writer responded to the Personnel Office at D.E.M. and through the assistance of [ ] was permitted to view the personnel jacket of Ms. Vingi. The service jacket contained the normal amount of papers and documents

associated with State Employees pay rate; transfer requests; vacation requests; etc., etc., etc. Detective observed two State of Rhode Island Department of Labor, Workers Compensation Reports, which were submitted on behalf of D.E.M., as the employer of Ms. Vingi.

The first Workers Compensation report is file #1735-10300, and is dated October 21, 1987. The injured person is noted as being Debra Vingi, 38 Salem Drive, North Providence, Rhode Island; age 31; term of employment five years and six months. Location of the place where the injury occurred was 83 Park Street, on 10/04/87, at 4:20 P.M.

The narrative portion of the report listed cause of injury "reaching for the heater, a piece of paneling from the wall went under the nail of middle finger, right hand". A piece of wall paneling is noted as being the substance which caused the injury and the nature of the injury is middle finger, right hand. The report indicates that the patient was treated by Physician Carmine J. Capalbo, M.D., 110 Lockwood Street, Providence, Rhode Island, 331-1036. This report was signed and dated October 21, 1987, signed by Melanie Mouradian, Chief Employee's Relations Officer. As a result of this injury, Ms. Vingi was prohibited from working from the date of the injury, 10/04/87, until 10/13, 87, and she was treated at the Rhode Island Hospital Emergency Room, on 10/04/87, and was instructed during this treatment to soak her finger, from time to time over the next several days following the injury.

The second division of Workers Compensation Employers Report of Injury is file #1735-10300-01, and the employee information indicates that the employee was a Debra Vingi, 38 Salem Drive, North Providence, DOB: 5/11/56, and the report or document again is signed by Ms. Melanie Mouradian, dated 2/5/93.

In the narrative section of the report the time and place of injury is noted as being 83 Park Street, Providence, Rhode Island, date 2/2/93, and the injury occurred at 5:15 P.M. Cause of injury is noted as follows:

Question #17 - What was the employee doing when injured or exposed? And the typed written response is going to bathroom, when door fell off and struck her in left leg.

And Question #18 - What is the object or substance which directly injured the employee - bathroom stall door.

And Question #19 - Describe how the accident or injury occurred - stall door broke off hinges and struck her on the left leg. And the nature of injury - paragraph left leg is indicated as being the area injured; and probable length of disability is noted as being 2/15/93. This particular section of the report was signed by David L. Tyler, Conservation Officer, dated 2/2/93, D.E.M. Enforcement. And the report also reflects that the patient, Ms. Vingi, was treated by Dr. Joseph A. Izzi, M.D., Incorporated, 1351 Smith Street, Suite 101, North Providence, Rhode Island, 353-5550.

In reviewing this report it is determined that the employee, Ms. Vingi was out of work due to this injury, for a period of fourteen days.

During the course of this background investigation, this Detective received an anonymous telephone call, during which the male caller stated: Ms. Vingi while an employee of D.E.M. Enforcement, suffered an injury while in the ladies room, at the Park Street, Headquarters, and that after suffering this injury she accused male coworkers of rigging or booby-trapping the stall in the Ladies Room, so as to cause her injury. This caller elected not to identify himself, but was adamant in stating that if Detectives researched her personnel jacket, there would be documents supporting the evidence of this incident.

This writer seized both copies of the two Department of Labor, Workers Compensation Injury Reports as they relate to Debra Vingi. This Detective was unable to locate any other documents in Ms. Vingi's personnel jacket, which related to her performance of her assigned duties.

The two aforementioned documents will be attached to and made a part of this case file.

On March 24, 1994, this Detective contacted [ ], advised that for the most part, [ ] would avoid have direct contact with Ms. Vingi, [ ] described her as, "was not a PR person". [ ] she had trouble with customers all the time, [ ] feels that she would have to learn some manners and courtesy prior to becoming

a member of the Rhode Island State Police. [ ] could not recommend Ms. Vingi for employment with the State Police.

This Detective contacted [ ]never had any difficulties dealing with Ms. Vingi [ ] and describes her as a nice person, very professional and would recommend her.

This Detective contacted [ ] describes Ms. Vingi as being extremely intelligent, bright, articulate and also possessing a keen sense of street smarts. [ ] her as being physically fit, runs often and would recommend her to the Department of State Police.

NEIGHBORHOOD CHECK

On 3/17/94, this Detective responded to the area of 171 High Service Avenue, in North Providence, Rhode Island. Ms. Vingi lives in the basement apartment of this one story, wood framed dwelling, which is owned by a Doctor Migliaccio.
This writer interviewed [ ] quiet neighbor, could offer no derogatory information regarding her presence in the neighborhood. [ ] she appears to be a very routine oriented person, and that she arrives home at the same time; leaves the house at the same time; jogs; and otherwise appears to be a very regimented individual. [ ] This Detective responded to two other homes located [ ] had no idea as to who Ms. Vingi was, and therefore could not offer any information with regard to her. It is noted that his address is on High Service Avenue, located directly across from the St. Joseph's Our Lady of Fatima Unit Hospital, and many of the dwellings in this neighborhood are used as Doctor's offices or laboratory type dwellings.

This writer contacted [ ] brought upon the Department of State Police, by Ms. Vingi through the Commission for Human Rights, located at 10 Abbott Park Place, Providence, Rhode Island, 277-2661. Debra Vingi filed this complaint with the Human Rights Commission, on October 6th, 1992, and the basis for the suit was allegations of discrimination against the Rhode Island State Police and Colonel Edmond S. Culhane, Jr. alleging a violation of the Rhode Island General Laws, Title 28, Chapter 5. The purpose for her filing this action with the Human Rights

Commission was to challenge the written examination given to female candidates. Ms. Vingi claimed that the scoring threshold with regard to the written examination for the females was too high, and even though she scored a 90 on the written exam, this did not permit her to continue on along in the screening process. As a result of this, she was not a finalist for the final select group of candidates. The Human Rights Commission found no probable cause to proceed with this law suit, and this matter saw no further action by the Human Rights Commission. A copy of the letter dated October 7th, 1992, to Colonel Edmond S. Culhane, Jr., from Mary F. Soarses, investigator for the Rhode Island Human Rights Commission will be attached to and made a part of this case file.

[ ] file regarding this matter is stored in [ ] and would be available to this Department upon such request.

The following inquiries were conducted by personnel of the N.C.I.C. center at State Police Headquarters, Rhode Island B.C.I., Rhode Island License Data, N.C.I.C. Local Triple I, and A.A.D. Abstract.

Ms. Vingi was determined to have an active Rhode Island Operator's License, no activity against that license and the remainder of the checks were negative with regard to her history.

This Detective checked with the State Police B.C.I. Intelligence Unit and Detective Division files and those checks were negative. And a phone call placed to the North Providence Police Department determined they have had no contact or complaints with regard to Debra C. Vingi.

PERSONAL INTERVIEW OF APPLICANT

On Thursday, March 24, 1994, this Detective conducted a formal interview of applicant Vingi, at the State Police Detective Division office, located in North Scituate, Rhode Island. The time of interview was 7:30 p.m. and the applicant arrived on time and was dressed accordingly in a professional business attire.

Ms. Vingi advised that she has been employed by D.E.M. for the past twelve years and normally works from 4:00 to 12:00 P.M., Sunday through Wednesday, and a day shift on Saturday.

This writer inquired as to why her mailing address is different from that of her home address, at 171 High Service Avenue. Ms. Vingi advises that she has her mail sent to: P.O. Box 40042, c/o Joanne King, Providence, Rhode Island, due to the fact that the home in which she lives was unoccupied for an extended period of time and she was uncertain whether the postal service would in fact deliver mail addressed to her, at the address at: 171 High Service Avenue.

This Detective inquired as to the identity of Joanne King and Ms. Vingi indicated that Joanne King was a close personal friend of hers. Ms. Vingi further advised that she had applied to the Department of State Police, in 1995, 1986 and 1990, and would apply again, if she was not successful in gaining entrance to the State Police Academy this time.

With regard to her professional duties and assignments at D.E.M., she advised she is usually alone in the office at 83 Park Street, during her shift and is responsible for maintaining telephone and radio communications for the Department of Environmental Management, Enforcement Division personnel during her shift. She stated that on occasion she has had to deal with individuals attempting to gain entrance into the building, during her tour of duty, and is not intimidated to be alone in the office area during her shift.

Ms. Vingi was asked about any problems or difficulties she may have experienced with any of her coworkers during her D.E.M. career. She advised this Detective she was totally unaware of any such problems, if they did or do exist.

When asked about the status of her relationship between Captain David Tyler, her superior officer, and herself, she advised she was unaware of any difficulties the Captain may have had with her and furthermore she related that "the man is presently on sick leave and I don't know what type of medical problems he has".

Ms. Vingi advises that at times the office will become quite busy with radio traffic and telephone calls from the general public, but that she feels she is able to manage the stress associated with this type of duty.

The applicant advised that she does not have any medical or physical problems which would prohibit her from participating in the rigorous physical activities associated with the State Police

Academy. She did state that she had a hernia operation four years ago, and that there was no problems associated with the recovery from that surgery, and that it took place at our Lady of Fatima - St. Joseph's Hospital, North Providence. She was out of work or on sick leave for a period of six weeks, due to this surgery.

Ms. Vingi advised that she currently works out everyday. Ms. Vingi was unaware of any problems or confrontations with any friends, associates, or neighbors, and stated for the most part she is a very private person, who enjoys reading, jogging and studying language courses.

With regard to her financial standings she stated she is indebted to the Fairlawn Credit Union, in North Providence, in the sum of approximately $4,000.00, which was a personal loan.

And she is also indebted to the Charter Savings & Loan located at 5300 West Atlantic Avenue, Delray Branch, Florida, for the amount of approximately $60,000.00, which is a mortgage note used to purchase a Condo, in the Delray Beach, Florida area. She advises she has no difficulties in meeting these financial demands.

With regard to the preparation of her application to the State Police, Ms. Vingi's attention was directed to page 4, of that application. Under the heading: Court Record - to the Question: Have you ever plead guilty/nolo contendere or been convicted of any misdemeanor or felony offenses regardless of whether or fine or penalty imposed or are there any criminal charged pending against you? - She answered, "No".

In this next question, Question B: Have you ever been plaintiff or a defendant in civil court action? - Ms. Vingi has placed a check mark in the answer space provided for the reply, No.

This writer then questioned Ms. Vingi as to whether she had any recollection of being the plaintiff in the action brought against the Rhode Island State Police, and Colonel Edmond S. Culhane, Jr., on October 6, 1992, in the form of a discrimination? The applicant then stated, that she did recall filing the complaint with the Human Rights Commission and that she filed that action on or about October 6, 1992, after she learned she had not been selected as a finalist from the pool of candidates, at that time.

This writer inquired of Ms. Vingi, if she recalled hiring or retaining an attorney to present her complaint to the Human Rights Commission. At which point, she answered, "yes, in fact that she had hired Attorney Ina Schiff, to represent her interests in this matter". She was then asked, if she paid for the services of Attorney Schiff, to which she replied she did in fact pay for the attorney fees associated with hiring Attorney Schiff.

This detective then directed Ms. Vingi's attention to the question on the application: Have you ever been plaintiff for defendent for civil court action, and asked her, why did she indicate "No" to this question? She related that she did not feel she was in fact, a plaintiff, due to the fact that she had never made a formal appearance in a court room setting, with regard to the execution or disposition of this complaint.

It became apparent to this detective that the above line of questioning was emotionally upsetting to Ms. Vingi, as she began shifting uncomfortably in her chair and her eyes began filling with tears. Ms. Vingi advised that her intent was not to mislead the State Police in filling out the application and answering No to that question, however she misunderstood the true definition of the word plaintiff.

This writer asked Ms. Vingi if it was her intent to mislead the Training Division of the State Police, and she adamantly denied this.

This writer asked Ms. Vingi, if she was aware of the disposition of this suit before the Human Rights Commission, and she advised that in fact the suit was still pending. There appeared to be some confusion in her answer that the matter was still pending and then she changed her answer to she believes there was a decision from the Human Rights Commission, which was appealed by Attorney Ina Schiff. She advised this writer that she also spoke with Attorney Schiff several weeks before this interview took place, on March 24, 1994.

The interview with Ms. Vingi was concluded and prior to leaving the interview room she reiterated to this Detective that, if she is not successful in gaining entrance to the State Police Academy, during this session, that she will try again, because it is her goal in life to become a member of the State Police. She was then adamant in denying any attempt to mislead the department in the preparation of

her application. It appeared as though she remained emotionally upset even during her departure from the Detective Office, at State Police Headquarters.

CONCLUSION AND RECOMMENDATION

It is the conclusion of this Detective that applicant Debra C. Vingi, is not a suitable candidate for a law enforcement employment, particularly as a sworn member of the Rhode Island State Police. The basis for this conclusion is as follows:

In interviewing [ ] it was determined that the applicant has a propensity to short temperedness with coworkers and the general public, (refer to the activity report of Detective Corporal Robert Mattos). Prone to this behavior the applicant would cause irreparable harm to the reputation of the Rhode Island State Police.

Secondly, it appears that the applicant deliberately attempted to mislead or deceive the Department of State Police in falsely answering question letter B, in the court record portion of the State Police application. Have you ever been plaintiff or defendant in Civil Court action? - The applicant answered, "No", to this question.

Surely, someone who has worked in a law enforcement entity for the past twelve years, as a civilian employee, would be able to basically define the term, plaintiff.

Furthermore, the applicant having retained the services of an attorney, paid for the services of that attorney from his/her own monies, and then continuously communicated with that counsel would understand the ramification of being a plaintiff, or the definition of the word, plaintiff.

It appears as though there is a pattern of deception in the applicant's application and in her testimony associated with this writer's questions during the interview on March 24, 1994.

Based upon the above stated facts, this Detective would not recommend this applicant for entrance into the Rhode Island State Police Training Academy.

s/_____
Corporal Michael P. Iarossi
Detective Division

APPENDIX H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DEBRA VINGI

VS. C.A. NO. 94-466P

STATE OF RHODE ISLAND, et al

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ /

DEPOSITION OF LEO D. MESSIER, a witness, in the above-entitled cause, taken on behalf of the Plaintiff, pursuant to notice, before Jo Anne M. Sutcliffe, Notary Public in and for the State of Rhode Island, at the offices of the Attorney General, 72 Pine Street, Providence, Rhode Island, on May 10, 1995, at 4:00 p.m.

APPEARANCES:

FOR THE PLAINTIFF: INA P. SCHIFF, ESQ.

FOR THE DEFENDANT: ROBIN FEDDER, ASSISTANT ATTORNEY GENERAL
and BRUCE BOWIE, ESQ.

A. On the background investigations I supplied the information to find out who was going to have background investigations done. I then organized from previous background investigations to put the same information into a kind of a form or setup which really wasn't changed at all just for some of our new detectives on the format and we just wanted to have the format in the same chronological order so everybody's background would basically be -- the information would be in the same chronological order and the only difference was that these people were now going to be interviewed and they were also going to make recommendations, the detective division would make recommendations.

Q. Okay. Were those the only things that you did? I want to ask you about each of them.

A. Pardon?

Q. Did you do other things with regard to the background investigations?

A. The only other thing would be the actual carrying out of background investigations from certain point to certain point.

Q. I'll leave that aside for the moment. You

process?

A. The people that were recommended were reviewed, all of their application files and their background investigation files were given to either Colonel Culhane, Major Rowley or Captain MacDonald to be reviewed.

MS. FEDDER: I just wanted to say that I think that answer to Interrogatory No. 43 should -- will be amended to include Major Rowley who is not listed there.

MS. SCHIFF: Okay.

MS. SCHIFF: You said 43, Robin?

MS. FEDER: Yes. That is an oversight that will be corrected.

MS. SCHIFF: You don't have to do a formal one.

MS. FEDDER: We'll put it on the record. As per the information just provided by Miss Fedder, the defendant's answer to Interrogatory No. 43 will be amended to include Major Rowley so there is no need to provide a separate document.

MS. FEDDER: Thank you.

Q. Okay. Did you participate in the review of